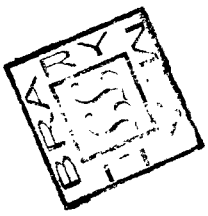
A SOCIO-LEGAL STUDY
OF
WHITE COLLAR CRIME IN INDIA

N. R. MADHAVA MENON
M.A., LL.M. (Alig.)

THESIS SUBMITTED TO THE ALIGARH MUSLIM UNIVERSITY
FOR THE AWARD OF THE Ph.D. DEGREE
OCTOBER 1968

UNDER THE SUPERVISION OF
PROFESSOR HAFEEZUL REHMAN
DEAN, FACULTY OF LAW
ALIGARH MUSLIM UNIVERSITY
ALIGARH



PREFACE

This study is about white collar crime in India- a socio-legal survey of occupational crime amongst the socially privileged and economically superior sections of the people. It has attempted to assess the volume, nature and extent of white collar criminality, the causes therefor, and the effectiveness and inadequacies of the legal processes in reducing its incidence.

It has long been the practice in India to identify the crime problem with certain backward socio-economic conditions and/or with psychological maladjustments of individual offenders. Criminal policies and penal reforms have been largely based on the above assumptions. The widespread prevalence of criminal practices in the occupational activities of the richer and socially advanced segments of the community has tended to disprove the popular impression of crime as a narrow range of behaviour concentrated in the lower class of people. The socio-economic impact of white collar criminality seems to have not yet been fully appreciated either by the administrator or by the common man. This study, it is hoped, might help to develop information and understanding of this new and important segment of the crime problem in India today.

The study was undertaken in 1962 under the guidance of professor Hafeezul Rehman, Dean, Faculty of Law, Aligarh Muslim University with financial assistance from the University and later from the University Grants Commission. The completion of the work in this form would not have been possible but for the continued encouragement and valuable help from my teacher and guide Professor Hafeezul Rehman. I am indeed thankful to him.

N. R. MADHAVA MENON

CONTENTS

LIST OF TABLES

LIST OF APPENDICES

LIST OF CASES

Buddha Pitai	Vs	S.D.O. 1965(2) Cr.L.J. 306
Brend	Vs	Wood (1946) 62 T.L.R. 462
C.S.D.Swamy	Vs	The State 1960 Cr.L.J. 131 (S.C.)
Devaraj uly Co.	Vs	I.T.C. A.I.R. 1951 Mad. 716
Delhi	Vs	Surja Ram 1965(2) Cr.L.J. 571
Dhingra	Vs	Union of India 1958 S.C.R. 828
Deonandan	Vs	State of Bihar 1955 Cr.L.J. 1647
Emden	Vs	State of U.P. A.I.R. 1960 SC 548
Food Inspector	Vs	P.Kannan A.I.R. 1964 Ker. 261
Ganga Sagar	Vs	Emperor A.I.R. 1929 All. 919
Harding	Vs	Prince (1948) All.E.R. 283
Hariprasad Rao	Vs	The State A.I.R. 1951 S.C. 204

State of Bombay Vs Automobile Industries Co.(1961)12 STC 1

State of M.P. Vs Jogi Lal 1965(1) Cr.L.J. 43

State of Maharashtra Vs Mayer Hans George 1965 S.C.D.(5) 735

Sarjoo Prasad Vs State of U.P. A.I.R. 1961 S.C. 631

The Indo-China Steam Co. Vs. Jasjit Singh (1964)S.C.D Notes 54

LIST OF STATUTES

The Indian Penal Code, 1860 (45 of 1860)

The Sea Customs Act, 1878 (8 of 1878)

The Indian Official Secrets Act, 1923 (19 of 1923)

The Insurance Act, 1938 (4 of 1938)

The Drugs and Cosmetics Act, 1940 (23 of 1940)

The Delhi Special Police Establishment Act, 1946 (25 of 1946)

The Prevention of Corruption Act, 1947 (2 of 1947)

The Foreign Exchange Regulation Act, 1947 (7 of 1947)

The Imports and Exports (Control) Act, 1947 (18 of 1947)

The Drugs (Control) Act, 1950 (26 of 1950)

The Industries (Development and Regulation) Act, 1951(65 of 195

The Commissions of Inquiry Act, 1952 (60 of 1952)

The Forward Contracts Regulation Act, 1952 (14 of 1952)

The Estate Duty Act, 1953 (34 of 1953)

The Prevention of Food Adulteration Act, 1954 (37 of 1954)

The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (21 of 1954)

The Essential Commodities Act, 1955 (10 of 1955)

The Companies Act, 1956 (1 of 1956)

The Central Sales Tax Act, 1956 (74 of 1956)

The Expenditure Tax Act, 1957 (29 of 1957)

The Wealth Tax Act, 1957 (27 of 1957)

The Trade Marks and Merchandise Act, 1958 (43 of 1958)

The Income Tax Act, 1961 (43 of 1961)

The Customs Act, 1962 (52 of 1962)

The Defence of India Act, 1962 (51 of 1962)

The Companies (Profits) Surtax Act, 1964 (7 of 1964)

The Finance Act, 1964 (5 of 1964)

CHAPTER I

INTRODUCTION

I

The need for correlating law and legal processes with the expanding dimensions of contemporary socio-economic situations and gearing them as effective instruments of social reconstruction, has never been greater than now. For a realistic approach towards this end, one has to equip himself with a clear perception and objective appraisal of the problems demanding legal solution, the social and cultural milieu in which legal rules are called upon to operate, the goal values of the community, and the limitations of law as a method of social control. This lends importance to a sociological basis for legal research particularly in relation to criminal law and its administration which vitally affects the life, liberty and property of a large number of people.

In countries like India which are wedded to socialistic philosophy and planned economic development, the use of criminal sanctions by the State for realizing certain declared social, economic and political objectives, is bound to increase, making it all the more necessary to evaluate the operative forces in relation to those goal values. Unfortunately very little positive effort appears to have so far been made in India in this direction despite there being a general agreement amongst legislators, administrators and social scientists on the need for reorienting legal research towards this end.

This project is no more than a modest attempt to study in the above context one of the increasingly significant areas of criminality in this country in which the comparatively affluent section of the people is involved. While exploring the nature and extent of white collar criminality in India and its relation to socio-economic factors in contemporary Indian society, stress has been laid on the causative and remedial aspects of this type of criminal behaviour. In essence, the present study is a survey of the wide and ever-increasing field of white collar crimes in India in a socio-legal perspective with a view to provide an appraisal of criminal behaviour on the part of a large and influential body of persons belonging to the upper and middle classes of our present day society. While affording a better appreciation of the crime problem in the country today, it also attempts to focus attention on certain crimes which are not included ordinarily within the scope of criminological studies and crime statistics.

II

An examination of the basic problems relating to white collar crime will naturally require an assessment of the socio-economic factors that led to its emergence. It is to some extent inevitable in a society undergoing rapid and profound technical, organizational and ideological changes of a basic and fundamental import, that the criminal codes formulated under simpler and more stable conditions have become inadequate as instruments of social protection

and welfare. During the past hundred years and more, after the codification of the substantive criminal law in the shape of the Indian Penal Code, a large number of penal statutes have been promulgated in India to combat different kinds of conduct considered harmful to society. A number of these statutes contain criminal prohibitions on economic behaviour with a view to promote socio-economic justice and develop national economy for the general benefit by planned use of resources.[2] Licensing, price fixing, requisitioning of stocks, control on movement of commodities, regulation of industry, trade, commerce and foreign exchange utilisation , increased taxation on higher incomes, control on export and import trade etc., have been undertaken in India on a large scale resulting in frequent application of criminal sanctions in areas of economic activity that were traditionally not interfered with by the State. This progressive legal condemnation of many of the traditional business and occupational practices was apparently not readily accepted by the economically important sections of the community and, therefore, the administration of criminal law in this sphere proved to be considerably difficult and largely ineffective. The demand for illegal goods and services, corruptibility of law enforcement authorities, general ignorance and apathy on the part of the public, socio-economic status and influence of the offenders in question - these and other factors facilitate the continuance of the predatory operations of anti-social elements in this area and protect them from exposure, prosecution and conviction.

The full extent of white collar criminality can only be surmised. Its enormity is suggested by the demonstrated frequency of fraudulent business and company practices, fictitious investment schemes, submission of false tax returns and evasion of taxes, adulteration and misbranding of foods, drugs and cosmetics, insurance and bank frauds, illegal accumulation of "black money" and foreign exchange, artificial scarcity of essential goods, black marketing and price control violations, sub-standard performance of contracts of construction and supply, bribery and corruption in relation to public services, illegal exploitation of labour unions and trade associations by their officers and agents, and grossly unethical and illegal conduct on the part of professional men in the world of law, medicine, accountancy, education and politics. The reports of various official, semi-official and private organisations concerned with the regulation and enforcement of business laws,[3] the findings of a number of enquiry commissions appointed under the Public Enquiries Act, 1952[4], and the trial reports of white collar offenders indicate the extent and variety of white collar crime in India. There is hardly any occupation or profession in this country today which is not affected by white collar criminality. The criminal behaviour of white collar groups not only involves enormous sums of money but also affects the economic and social well-being of thousands of people. Since it also involves violation of public confidence and trust in one who is presumed to be honest and is socially respected, it has the added effect of destroying public morale and of

promoting social disorganisation. Thus, the dangerous potentialities of this new area of criminality not only pose a serious challenge to criminal law and its administration but also tend to undermine and destroy the democratic framework of society as a whole.

The study of white collar crime, therefore, is significant in many respects. The serious economic and social implications of this form of criminal behaviour have not yet been fully appreciated in this country. Judging from the enormous damage caused by each of the big financial frauds in the commercial process,[8] one can reasonably presume that the total loss in any one year resulting from only a few types of fraudulent business deals will easily outmatch the combined damage to property inflicted by all the traditional offences (theft, robbery, burglary, mischief and the like) in that year.

The inclusion of white collar crime in the sociological study of illegal behaviour is responsible for the revision of many traditional theories of crime causation based on the assumption that criminal behaviour is predominantly a function of low socio-economic status and inferior biological constitution. White collar crime cannot be explained in terms of poverty, social backwardness or other sociological and psychopathic conditions generally associated with poverty.

A study of white collar crime further reveals varying attitudes of the community towards different types of crime and the social process-es that govern them. It

manifestly displays how society is differently organised and does not carry one single value-system. There are some norms and values which are common to all, but many others are unique to diverse groups. The theoretical implications of white collar criminality are not only of importance for the social scientist but also for the legislator and the enforcement officials, because they throw much light on the ethics and efficacy of criminal sanctions in social regulation, particularly in the economic sphere.

III

The broad outline of this study may, thus, be summarised as follows:

1. The Concept of White Collar Crime: Nature and definition: Factors that led to its emergence; Legal basis of white collar crime; Problems in the enforcement of regulatory statutes in the field of economic behaviour; Conclusion.

2. White Collar Crime in Trade, Commerce and Industry: Peculiarities of business crimes; Various types of business criminality, their causes and extent; Concentration of economic power and monopolistic behaviour in commercial transactions; Criminality in advertising; Chit Fund Schemes - A Case Analysis in White Collar Criminality; Criminal administration of business laws - Problems and Perspectives.

3. Evasion and Avoidance of Taxes: Tax laws and their administration with special reference to criminal law of taxation; Evasion and avoidance compared and distinguished; Causes, extent and methods of evasion; Reforms in tax structure and administration.

4. Adulteration of Foods and Drugs: Gravity of the problem in India; Adulteration techniques; Factors responsible for the continuance of the menace of adulteration; Examination of the laws and their administration; An Assessment of the extent of adulteration; Existing means of Consumer Protection; Advertising and Sales Practices; Conclusions.

5. The problem of White Collar Criminality in the sphere of Government and political life of the country with the following main breakups:

The menace of corruption in public administration - its nature and scope; Corruption in historical perspective; Causes of corruption - general, historical, environmental, economic, functional, procedural and sociological; Extent, magnitude and cost of corruption; Political corruption; Examination of the law and procedure vis-a-vis checking corruption; Importance of preventive steps, public cooperation and institutional reforms.

6. White Collar Criminality in the professions of Law, Medicine, Accountancy and Education:

The problem in broad perspective; A general assessment of the types and extent of criminality in the professions; The need for stricter standards and codes of ethical conduct;

The role and responsibility of professional organizations.

7. The broad conclusions arising from the study; General recommendations and suggestions; Attitude of the public towards white collar criminality; Need for institutional, organizational and social reforms.

IV

The study is admittedly neither exhaustive nor complete with regard to all the varied aspects of the problem. The particular purpose of this work, as already stated, is only to examine the important problems relating to white collar crime ranging over the whole field of criminal law and jurisprudence and to present them in broad socio-legal perspective. It is therefore concerned more with the character and dimension of white collar criminality in general than with points of detail. Comparisons are drawn, wherever considered necessary and instructive, between the Indian and American situations. There are a few repetitions of facts and conclusions derived from them, but such repetitions have been advisedly allowed to remain for a clearer appreciation of the issues examined.

It is necessary to point out in this context the difficulties involved in collecting data for this study as it might account, to some extent, for the gaps and deficiencies therein. In traditional legal research the generally accepted sources of data are, inter alia, the statutes and judicial decisions. But these conventional legal materials could only

be a minor source of information for this study. Many violations of regulatory legislations are punished outside the ordinary criminal courts by tribunals or administrative bodies constituted for the purpose. These decisions are neither reported nor are available for public scrutiny. For obvious economic and political reasons, only a negligible fraction of offences under this category ever come to be subject to prosecution in ordinary criminal courts. Police records and crime statistics therefore do not furnish reliable data of white collar criminality. The people and organizations (both government and private) who have vital information in this respect guard them carefully from outsiders. Naturally, therefore, the study has had to depend on a large mass of 'extra-legal' information not as authentic and as readily verifiable as traditional legal sources are.

Besides the conventional legal materials, the following are the important sources of information on which the present study is based: Reports of the Delhi Special Police Establishment (now the Central Bureau of Investigation) and of the Central and State Vigilance Commissions; Reports of the Auditor-General and the Public Accounts Committee of Parliament; Annual reports on the working of the Indian Companies Act, 1956; Annual and occasional reports of the various Ministries/Departments of Government including the Enforcement Directorate of the Ministry of Finance, the Central Board of Revenue, the Central Drug Control Administration, the Health Services Directorate of the Ministry of Health; Reports of the various Public Inquiry Commissions appointed by the Central and State Governments; Parliamentary debates

and private studies of individuals and institutions. Materials extracted from journals and newspapers have also been used to corroborate findings reached through interviews and discussions with trade and business organizations, professional associations, legislators and public men. A limited survey of public opinion has also been conducted in order to assess the attitude of the public towards different forms of white collar criminality.

Criminological studies, it may be noted, are wider in scope as compared to strictly doctrinal legal research. In the context of the changing concepts of crime, sociologists have found legal definitions unacceptable as the basis for any realistic study of human behaviour.[6] They have therefore taken anti-social conduct or deviation from the socially accepted norms of human behaviour as the basis for sociological research irrespective of the fact whether they are, or not, prohibited by criminal sanctions. This study, being socio-legal in nature, may be largely justified, if, in the discussion of white collar criminality, situations not legally defined as criminal but proved to be socially harmful and violative of social norms, are considered along with legally prohibited acts.[7] This does not mean that the findings and conclusions of this study are based on non-criminal behaviour. References to anti-social and unethical practices that lie on the periphery of crime are only meant to facilitate the appreciation of the problem in a realistic socio-legal perspective.

CHAPTER ONE

REFERENCES AND NOTES

1. The Preamble and the Directive Principles of State Policy (Part iv), The Constitution of India; Also see the economic resolutions of the All India Congress Committee, 1954-1967.

2. Some of the important statutes in this area are: Essential Commodities Act, 1955; Industrial (Development and Regulation) Act, 1951; Imports and Exports (Control) Act, 1947; The Companies Act, 1956; The Foreign Exchange (Regulation) Act, 1947.

3. For example, the annual reports of the Company Law Administration on the working of the Indian Companies Act 1956; the periodical reports of the Delhi Special Police Establishment (now the Central Bureau of Investigation); the reports of the Public Accounts Committee of the Union and State legislatures; Reports on the administration of pure food and drug laws, tax statutes by the respective enforcement agencies of the Central/State Governments.

4. The Vivian Bose Commission Report on the Dalmia Jain Group of Companies (1962); The Santhanam Committee Report on Prevention of Corruption (1964) are examples.

5. The following findings of two Commissions of Inquiry are appropriate in this respect:

   (i) "During the five year period from 1958 to 1962, as many as 348 firms obtained 660 licences valued at Rs.2,38,24,142 by misrepresentation or on the basis of forged documents. Again during the above period another 361 firms wrongfully utilised 717 licences valued at Rs.4,43,10,784 which they had obtained under the category of 'actual users'. Commodities imported on the bas-is of 'actual users' licences were sold in the black market. It is estimated that each licence would fetch anything between 100 per cent and 500 per cent of its face value when sold." Report of the Committee on Prevention of Corruption, Government of India (1964), p.18 and p.65.

   (ii) The report on the working of the Dalmia Jain Group of Companies indicates the enormous extent of public money involved in only a few of the fraudulent transactions enquired into by the Commission.

6. Morris, Albert Changing Concepts of Crime, Encyclopaedia of Criminology (1942).

7. Tax avoidance, monopolistic, restrictive and sharp trade practices, grave professional misconduct and unethical behaviour, intentional or careless waste of national property are illustrative of socially injurious acts not always defined or punished as crimes. Yet, in certain cases, they are more socially reprehensible than many of the crimes already defined in the statute book. In many socialist countries such conduct are being punished with deterrent and even exemplary sentences.

CHAPTER - TWO

THE PROBLEM OF WHITE COLLAR CRIME

I

The concept of "White Collar Crime" was introduced for the first time by the late Professor Edwin H. Sutherland in his presidential address to the American Sociological Society in 1939.[1] He studied the records of seventy large corporations and fifteen public utility concerns in America and formulated a theory of white collar crime which has influenced criminological research ever since.[2] The later studies of Clinard,[3] Hartung,[4] Lane,[5] Aubert,[6] Cressey,[7] Newman[8] and Quinney[9] have abundantly supported the general thesis of white collar criminality in America.

Sutherland defined white collar crime "approximately as a crime committed by a person of respectability and high social status in the course of his occupation".[10] A white collar criminal is "a person in the upper socio-economic class who violates the laws designed to regulate his occupation".[11] The terms "white collar" is used to refer principally to business managers, executives and professional men who wear good clothes at work and who form the upper and middle classes in modern societies.[12]

The motivation behind Sutherland's interest in white collar crime appears to have had two principal components. First, he was impressed by the manner in which the legal processes operate to the distinct advantage of the privileged and influential social classes. The editors of "The Sutherland

Papers" hold it reasonable to assume that his interest in business crime was aroused in part by his recognition and appreciation of this patent social fact.[13] The second, and perhaps the major, incentive, according to the editors, was his dissatisfaction with conventional theories of crime. Conventional theories, Sutherland felt,[14] placed an undue emphasis on poverty and other conditions concentrated in the lower socio-economic classes and neglected the crimes committed by the middle and upper classes. His concern with occupational crimes of the upper social classes, therefore, displays "his persistent drive toward a comprehensive sociological theory, free of contradictions and consistent with empirical knowledge".[15] Thus Sutherland's work in white collar criminality remained essentially an attempt to broaden the horizons of criminological theory by bringing a neglected phenomenon within its purview. Later, when he had formulated the "differential association theory", he applied it to white collar crime also.[16] This theory, which purports to explain all criminal behaviour, conceives of criminality as the result of participation in a particular cultural tradition and association with representatives of that cultural group. Whatever be the defects of his "theory of differential association",[17] the implications of Sutherland's theory of white collar crime cannot be overlooked in criminological research in the future.[18]

With the achievement of political freedom in India and subsequent general improvement in economic and social conditions, the ranks of white collar criminals appear to have swelled causing concern to legislators, administrators and

social scientists. But, despite the growing awareness of the social and economic implications of this development, no comprehensive and systematic study of the problem has yet been undertaken at the official or non-official level. Sporadic legislative and judicial attempts to curb the criminal tendencies in this socially vital sphere have yielded very little results in the absence of reliable data and proper perspective of the problems involved. This study, as stated earlier, attempts, in a modest way to present the problem in broad socio-legal perspective.

II

In many countries with rapid economic progress and material prosperity, there seems to have been a marked increase in crime, principally in areas concerned with the production and distribution of wealth.[19] Criminologists and social scientists have specified a large number of factors directly or indirectly responsible for this phenomenon. The Industrial Revolution had initiated great social changes of far-reaching consequences. The change in the economic and social structure of property, comprising the transformation of an increasing proportion of wealth from property in tangible, visible and mainly immovable goods into ownership in intangible and invisible powers and rights such as shares, trademarks, patents and copyrights, coincided with the growth of large-sized corporations replacing individual entrepreneurs. This development, inter alia, led to concentration of economic and consequent political power in a few hands, absentee ownership and impersonal monopoly, emphasis on money

and credit and decline in the sense of social responsibility on the part of owners of large property.[20] Impersonality in business relations, anonymity of persons and the separation of ownership from control involved in the change impeded the location of responsibility and increased the rationalization of criminal behaviour. Together with it, the two World Wars considerably debased the ethical standards of the community, brought about economic depression and provided immense opportunities for unscrupulous men to amass easy money through dubious means. Criminal law was called upon to protect the interests of the owners of commercial property and, through them, that of society at large, against the machinations of those entrusted with its handling in the commercial process. The simple original offences of theft, misappropriation and cheating had necessarily to be widened so as to include diverse and subtle manifestations of fraud, dishonesty and violation of trust.

Another factor that led to the emergence of this new pattern of criminal behaviour in a big way is the advent of the "welfare state" ideal which empowered the State to use criminal sanctions to enforce social standards and regulate economic activity for the general welfare. In many countries including India, constitutional obligations are imposed on the State requiring it to regulate the use and enjoyment of the material resources of the community as best to subserve the common good.[21] In some 'socialist' countries criminal sanctions are also being used to protect public economic interests and resources against depredation by

individuals.[22] As a result of this emphasis on the protection of social interests and collective welfare, a major legal trend from the late nineteenth century to the present day has been the development of a series of regulatory legislations.[23] Violations of these laws form the major basis of white collar crime. Depending upon their approaches to the problem, various scholars have named these offences differently as economic crimes,[24] public welfare offences,[25] regulatory offences,[26] upper world crimes,[27] administrative crimes,[28] and white collar crimes.[29]

III

White Collar Crime: Definition, Nature and Legal Basis

Although Sutherland stressed that his definition of white collar crimes was merely 'approximate' and not definitive, it has been generally accepted. It has five elements: (a) A Crime; (b) committed by a person of respectability; (c) holding high social status; (d) in the course of his occupation;[30] and (e) usually constituting a violation of trust.[31]

The first of these five elements, i.e., that a 'crime' must have been committed, is of fundamental importance. Sutherland has often been accused of trying to extend his concept of white collar crime beyond the limits of actions punishable under the criminal law, particularly when he includes wrongs generally dealt with not under the criminal law but under the civil or administrative law.[32] However, Sutherland's attempt was fundamentally to keep his concept

of white collar crime strictly within the scope of the criminal law. This is evident from the definition which he gave at another place to the concept. "A White Collar Crime", he defined, "is a violation of the criminal law by a person of the upper-socio-economic class in the course of his occupational activities."[33] In his later pronouncements he did include certain violations dealt with by administrative agencies within the scope of white collar crime. This aspect of 'definitional weakness' is considered below along with the examination of its legal basis and scope. It may, however, be noted here that a criminological enquiry, as the one in hand, shall necessarily have to go beyond "the inner zone of conduct violating the existing criminal law" and include violations of the non-traditional type if it is to be meaningful and productive of reformatory solutions.[34]

The other elements in Sutherland's definition are not as controversial as the one mentioned above. It is admitted that the concept of white collar crime requires a close relationship between the crime and the offender's occupation. According to Sutherland himself, the major criterion for the assessment of a crime as a white collar one is that it occurs as a part of, or in the course of, the violator's occupational role or professional conduct.[35] The phrase "in the course of" in this context means in furtherance of the occupational pursuit or being a method or part of one's occupational role. Naturally, therefore, a murder committed by a director of a large company for reasons of personal enmity or a sexual offence by a business executive will not be included in the category of white collar crimes. On the other hand,

adulteration or misbranding of foods or drugs by a manufacturer, wholesaler or retailer and manipulation of accounts and production of false income tax returns by a company director for the purpose of evading taxes legally due are illustrative of white collar crime.

The second and third elements in the definition - i.e., committed by a person of respectability and of high social status - are indicative of the social class of people involved in this area of criminality. Of course, they are indefinite phrases and, with the continuing changes in social organization, are susceptible to acquire different meanings. Sometimes 'respectability' may not be attached to a person of 'high social status' and vice versa. But the vicissitudes in public judgments and social attitudes will not make any material difference in the comprehension of that socio-economically privileged group of people intended to be included by Sutherland in his formulation of white collar criminality.

The criminal nature of white collar offences are to be examined in the broad perspective of socio-economic ills of present day society and the increasing legislative use of criminal sanctions by the modern Welfare State with a view to cure these ills. In this context, many white collar crimes are admittedly different both legally and sociologically from conventional crimes.[36] For one thing, most of the offences included in this category are relatively of recent origin arising out of the need for the protection of the consumer against the exploitations and deceptions in the name of

'freedom of trade' and, the need for protecting social interests and conserving national resources for general welfare. These offences are neither universally condemned nor they carry the same social opprobrium of vicious immorality or wickedness as the traditional crimes do. In many cases of white collar criminality, neither the violators themselves nor the society at large think of them as criminals in the traditional sense. This situation has even tended to promote selective obedience to law, where one does not obey all laws, but only certain types of law depending upon one's occupation, social class and the nature of the law itself. Critics of 'white collar crime concept' also try to substantiate their opposition by pointing out the legislative elimination of the requirement of mens rea in the definition of most of these offences and the administrative procedure, different from that employed for the adjudication of guilt under such laws by the criminal courts.

Largely speaking, although these criticisms have an element of truth in them and are partly justified, the differential characteristics of white collar crimes do not warrant their exclusion from the general category of crimes. After all, basically crime is an act or omission recognized by those in political authority as of such a nature and as sufficiently dangerous to the solidarity and welfare of the group as to warrant interdiction and punishment. The laws which define white collar offences satisfy these two basic requirements of criminal laws, viz., formal social condemnation of certain forbidden conduct and provision of sanctions calculated to prevent it. The argument, that 'no one should be

called a criminal until he has been properly adjudicated as such in a criminal court", advanced by Caldwell[38] and Tappan[39] is not only sociologically but also legally mistaken since it confuses issues of substantive and procedural law.[40] A 'criminal' is one who has violated any of the provisions of the substantive law, regardless of whether he has been found guilty in accordance with the rules of criminal procedure. As Cressey has pointed out,[41] "the principle in the criminal law of democratic nations is that criminal behaviour is behaviour that is punishable by law; the principle does not state that behaviour is not criminal unless it is punished". Further, there is nothing wrong in referring to "unapprehended criminals', 'criminals at large' or even 'unconvicted criminals', who, are criminally liable for punishment for their violations though not punished. Burgess's sociological objection[42] that, because white collar offenders do not consider themselves as criminals they should be excluded from the criminal category, is equally unconvincing. For, while the 'image' which the offender has of himself is of importance in the study of causes and cure of criminality, it cannot be taken as the basis of classifying him as criminal or otherwise. As Mannheim observed: "The criminal law cannot be made completely dependent on the offender's own view of whether or not he has violated the law and should be punished."[43]

Of course, the difficulties arising in the legal sphere from the introduction of the sociological concept of white collar crime cannot be under-rated. The legal structure and philosophy of 'public welfare offences', the criminal law of corporations and the various problems arising out of

specific areas of white collar criminality have indeed made them difficult to be brought under traditional concepts and standards of criminal jurisprudence and conceptional theories of criminal behaviour.[44] But, a closer examination makes it clear that the laws in question are only suitable adaptations of the principles of criminal law to the needs of a progressive socialistic society which has discarded the laissez-faire economic philosophy as socially inadequate and politically unjust. The procedural differences in the enforcement of these laws cannot be considered to have altered the essence of this type of anti-social behaviour which has been declared to be criminal by sound legislative policy.

Another objection often raised by critics is that many of the laws the violation of which constitute white collar offences are not criminal because they do not require mens rea or criminal intent to be proved. Jerome Hall and others who include mens rea as one of the essential and universal criteria of crime, justify their position by the argument that regulatory statutes, forming exceptions to the rule, are bad law".[45] But the common law doctrine of mens rea has long been dispensed with in an increasingly large number of cases on grounds of public welfare and social policy.[46] In statutory crimes it is usually not necessary to establish more than that the accused committed the act which was forbidden by the statute under which he is charged. These offences have been created to enforce certain standards in matters affecting the public. In provisions relating to public health, weights and measures, food and drugs, and numerous other matters public interest requires the highest degree of care and integrity to be displayed by those who deal in them,

and the best way of ensuring this is to make it clear that ignorance or mistake, however reasonable, will not be admitted as an excuse. Further, as Professor Kenny has pointed out,[47] the legislative elimination of *mens rea* occurs mainly in three kinds of cases. They are: (a) where the penalty incurred is not great (generally monetary); (b) that the damage caused to the public by the offence is in comparison with the penalty very great; and (c) the offence is such that there would usually be peculiar difficulty in obtaining adequate evidence of *mens rea*, if that degree of guilt was to be required. Though, in these cases, *mens rea* is excluded for purposes of conviction, the extent to which one is blameworthy is, however, relevant to the sentence and one may, according to the circumstances, be discharged or given any degree of punishment up to the maximum.

The application of the doctrine of strict responsibility in criminal law was, however, severely criticised by many theorists and writers[48] and some of them have suggested its replacement by a doctrine of responsibility for negligence strengthened by a shift in the burden of proof.[49] The courts have often appeared in the past the jealous guardians of the traditional principle that there should be no liability without *mens rea*.[50] But, of late, they too have increasingly shown an inclination to accommodate strict responsibility offences within the fold of criminal law. The slow and reluctant absorption of the doctrine of strict responsibility in criminal jurisprudence partly accounts for the difficulties in its reconciliation with traditional concepts like 'presumption of innocence',

'burden of proof', 'proof beyond any reasonable doubt' and 'benefit of doubt'. While the academic controversy on the status of statutory crimes not involving *mens rea* is still unsettled, its legislative and judicial adoption has increased considerably making it a necessary part of the administration of criminal justice. In answering the criticisms of moralists, Dean Roscoe Pound has admirably expressed the moral justification of the doctrine in criminal law when he said: "Such statutes are not meant to punish the vicious but to put pressure upon the thoughtless and inefficient to do their whole duty in the interest of public health, or safety or morals".[51]

In India the courts have not insisted upon the requirement of *mens rea* wherever the statutes had excluded it either expressly or by necessary implication.[52] The object of the Act, the mischief intended to be avoided thereby and the socio-economic background of the legislation were looked into by courts in order to ascertain the intention of the legislature on the question of the requirement of the "guilty mind" for offences under the Statute. Thus while interpreting the provisions of the Essential Commodities Act, 1955, the Calcutta High Court observed:[53]

> "The object of this Act is to provide, in the interest of the general public, for the control of production, supply and distribution of any trade and commerce in certain essential commodities. It is quite conceivable that in such circumstances the legislature meant to provide by necessary implication that the prohibitions introduced by orders passed under the Act were of an absolute nature. The orders passed under the Act would be orders to ensure supply and production of essential commodities in the interest of general public. That being so absolute prohibition was intended by the Act and there was no need of the proof of existence of guilty mind".

The Supreme Court in State of Maharashtra Vs. Mayer Hans George[54] also approved this principle and stated:

> "The Foreign Exchange Regulation Act, 1947 was enacted in order to conserve foreign exchange, the conservation of which is of the utmost essentiality for the economic survival and advance of every country, and very much more so in the case of a developing country like India ..... The provisions have therefore to be stringent and so framed as to prevent unauthorised and unregulated transactions which might upset the scheme underlying the controls; and in a larger context, the penal provisions are aimed at eliminating smuggling which is a concomitant of controls over the free movement of goods or currencies ..... In our opinion, the very object and purpose of the Act and its effectiveness as an instrument for the prevention of smuggling would be entirely frustrated if a condition were to be read into Section 8(1) or Section 23(1-A) of the Act qualifying the plain words of the enactment, that the accused should be proved to have knowledge that he was contravening the law before he could be held to have contravened the provision".

Further, the Court in the Indo-China Steam Navigation Company's case[55] held that the offence under Section 52-A of the Sea Customs Act, 1878 does not require mens rea, "as, if it was so, the statute would become a dead letter". The Supreme Court was of the opinion that the object and scheme of the Act and the intended purpose of the prohibition provided under Section 52-A therein (i.e. prevention of smuggling) warranted the dispensation of mens rea in the interpretation of the provision.

The problem was succinctly stated by the Supreme Court in the following words[56]:

> "The mere fact that the object of a statute is to promote welfare activities or to eradicate grave social evils is in itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of the offence. It is necessary to enquire whether a statute by putting a person under strict liability helps him to assist the State in the enforcement of the

> law..... Mens rea by necessary implication can be excluded from a statute only where it is absolutely clear that the implementation of the object of a statute would otherwise be defeated and its exclusion enables those put under strict liability by their act or omission to assist the promotion of the law. The nature of mens rea that will be implied in a statute creating an offence depends upon the object of the Act and the provisions thereof."

The need for strict responsibility in welfare legislation is also seen from the judgments of several High Courts.[57] Indeed, imposition of strict liability is now readily accepted in legislative and judicial circles in India whenever it is felt that such a scheme will assist in the enforcement of the regulations in promoting care and efficiency in business method or conduct. Such an arrangement may cause an occasional injustice to a morally innocent individual, but the answer to it would be, as Friedmann put it, "that we have to accept an occasional injustice to the individual is part of the price we have to pay for living in a highly mechanised and closely settled kind of society in which health, safety and well-being of each member of the community depends upon a vast number of other persons and institutions".[58]

The difficulties arising in the legal sphere, from the introduction of the 'sociological concept' of white collar crime have their origin in the legal structure and philosophy of 'public welfare offences', the criminal law of corporations and the various problems associated with the enforcement of laws creating specific white collar offences, such as adulteration of foods and drugs, fraudulent advertising, tax evasions, licensing offences etc.[58] It is the abandonment of the old laissez-faire economy and the increasing

insistence on adequate legal and penal protection against exploitation of the previously under-privileged classes that led to the creation of this new category of offences. The traditional standards of criminal justice with all the safeguards of the rights of the accused, particularly the requirement of individual guilt could not be applied with equal force in this new area of criminal law. This is an area of criminal activity where the standards of what is right and what is wrong are still evolving, and where society is still experimenting the effectiveness of less drastic sanctions for controlling anti-social conduct on the part of individuals or corporations. It is indeed unrealistic to apply the traditional standards of criminal justice to these offences. It is to be remembered that the acts in question are penalised not so much for their intrinsic immorality or wickedness as for the attainment of certain social objectives. It would really be incongruous to insist on the requirement of *mens rea* under a law which aims at the elimination of widely prevalent anti-social acts like smuggling, black marketing, evading tax and adulterating food stuffs.

It is true that most of the laws which create white collar crimes are implemented in a different manner as compared to the Penal Code. Persons accused of white collar crimes are seldom arrested, tried in criminal courts or committed to prisons. On the contrary, they are generally summoned to appear before a Commission of Inquiry or a tribunal or an administrative agency and when decisions are rendered against them, the sentences are generally in the form of small

fines, warnings, cancellation of privileges etc., although deterrent sanctions are provided under the law. Many of the offences are not dealt with the full force of criminal sanctions. These variations in procedure and enforcement have certainly the effect of reducing or eliminating the stigma of a criminal from the white collar offenders.

According to Sutherland, the preferential treatment of white collar offenders could be explained in terms of their high socio-economic status, the remedial philosophy of the laws in question and the relatively unorganized resentment of the public against white collar crimes.[60] Moreover, many of these offences are so complex and technical and their effects so indirect and diffuse that only an accountant, lawyer or a specialist alone can fully understand and appreciate their criminal nature. They are non-violent offences relating to business and financial activity and generally involve large monetary gains. The victim is ordinarily that abstraction - the public - which evokes little community resentment and ineffective opposition. The victims in most of such cases are hardly in a position even to know they are being victimised. It often requires special and prolonged investigations by expert committees to expose the real fact of violations. The newness, complexity and difficulties of detection and control of many aspects of the white collar crime problem can be seen most clearly when the offender is not an individual but a corporation. In such a case the establishment of guilt and location of responsibility will rather be difficult. Even when guilt is established, punishment will be another problem

because conventional criminal sanctions, excepting fine, have no application against an 'invisible' corporation.

If the activities of the white collar class could be scrutinised as readily as those of the lower socio-economic group, samples of which are readily available in our prisons, it might very well be that the former would turn out to be relatively more criminalistic than their less fortunate brethren. The exalted social position of many white collar offenders, coupled as it is with a combination of fear and admiration, not only allows them to escape conviction and, by their control of the press and means of propaganda, social stigma, but accounts for the mild provisions of laws regulating their occupations. These offenders are influential in the very process of law making. Through their lobby in legislatures, through pressure on the administration and through corruption of public servi es they succeed in thwarting strong action against their illegal activities. In this process they are supported by corrupt officials, sharp-shooting lawyers and an indifferent public.

The increase in white collar offences not only poses a serious challenge to the administration of criminal justice but also threatens the very security and progress of our society. Unlike traditional crimes, white collar crimes involve greater financial loss and larger damage to public morale. In this context, the following passage from a learned writer are worth recording:[61]

> "If these laws are violated by thousands of people and they are successful in exploiting the demand for illegal products and services, the very basis of the society is in danger because the values various people profess (and are reflected in

> their criminal laws) no longer command their respect or compliance. Sooner or later, therefore, people will have to make their minds either to bring their legislative ideals down to the point when they square with prevailing human nature or they will have to establish an administrative despotism strong enough to begin enforcing their moral ideals. They cannot much longer defy the devil with a wooden sword."

Significance of the study of White Collar Crime

The inclusion of white collar crime in the sociological study of illegal behaviour has necessitated the revision of many traditional theories of crime causation. Sutherland believed that conventional explanations of crime are invalid because they had been based on data drawn from a biased sample i.e. conventional crimes generally committed by people of the lower-socio-economic group. Sutherland held invalid the theory that criminal behaviour was due to poverty or to psychopathic or sociological conditions associated with poverty. He claimed that an adequate explanation of criminal behaviour must be related to a general process found in lower class crime as well as in white collar crime. He wrote:[62] "..... The hypothesis which is here suggested as a substitute for the conventional theories is that white collar criminality just as other systematic criminality, is learned; that it is learned in direct or indirect association with those who already practice the behaviour; and that those who learn this criminal behaviour are segregated from frequent and intimate contacts with law-abiding behaviour". In general, this theory views white collar crime as a natural product of conflicting values within our economic and social class structures and the white collar criminal, as an individual who, through associations with

colleagues who define their offences as "normal" if not justified, learns to accept and participate in the anti-social practices of his occupation.[63] While thus learning specific techniques of violating the law, the prospective offender develops a general ideology which helps to rationalise his behaviour and 'justify' it. Thus, phrases like 'business is business', '*caveat emptor*' etc., assist the neophyte in business to accept the illegal practices and provide 'justifications' for them. The person, in short, accepts the criminal activities as the customary or practical modes of occupational operation, although the principles involved may run counter to other ethical norms by which he controls his non-occupational life. This divergence in the personality of a white collar offender has tended to develop varying attitudes in society towards the behaviour in question and the social and legal processes that regulate them. White Collar violations reflect ideological and moral conflicts in more pronounced forms. Study of white collar crime indeed throws much light on social organization and value systems of diverse groups in it.

As already explained, white collar crime has significant implications in the administration of criminal justice and social reconstruction. It presents a socio-legal problem of increasing significance in contemporary society. It exposes the deficiencies and loopholes in our criminal law and administration particularly with respect to that of 'property'. It has added a new dimension to the crime problem and emphasised the need for consistent research in this area with a view to bring out the scope of illegal and immoral conduct, the use of non-criminal sanctions to

deal with it, the possible methods of strengthening enforcement agencies, the need for higher penalties for serious violations, the necessity for new law to deal with harmful activity that is not now illegal and the public attitudes towards crime and law enforcement.

CHAPTER TWO

THE PROBLEM OF WHITE COLLAR CRIME

REFERENCES AND NOTES

1. Sutherland, White Collar Criminality, American Sociological Review, 5: 1 - 12, February, 1940.

2. Frank E. Hartung, White Collar Crime: Its Significance For Theory and Practice, Federal Probation, 17 : 31 - 36, June, 1953.

3. Marshall B. Clinard, The Black Market, N.Y. (1952)

4. Hartung, White Collar Offences in the Wholesale Meat Industry in Detroit, 56, American Journal of Sociology, 25(1950)

5. Lane, Why Businessman Violate the Law, 44 Journal of Criminal Law, Criminology and Police Science, 151 (1953)

6. Aubert, White Collar Crime and Social Structure, 58, American Journal of Sociology, 263 (1952)

7. Cressey, Other People's Money, N.Y. (1953)

8. Newman, Public Attitude Towards Form of White Collar Crime, 4 Social Problems, 228 (1957); Also see, Law and Contemporary Problems (1958)

9. Quinney, Prescription Violation By Pharmacists, Unpublished Dissertation, University of Kentucky (1959)

10. White Collar Crime (1961) P.9

11. The Sutherland Papers, Edited by Albert Cohen, Alfred Lindesmith, Karl Schuessler, Indiana University Publications, Social Science Series No.16(1956) at p.78

12. For a detailed discussion on the White Collar people, See C. Wright Mills, White Collar, N.Y. (1956); See also Mannheim H., Comparative Criminology (1965) Vol.II PP.473-74.

13. The Sutherland Papers, Supra, Introduction, pp.1-4; See also Sutherland, Crime and Business, Annals of the American Academy of Political and Social Science, 217: 112-118, September, 1941.

14. Sutherland, White Collar Crime (1961) Part I. pp.3-16

15. The Sutherland Papers, Introduction, Supra, p.3.

16. Sutherland, Criminology (1939), Chapter I.

17. For criticisms on the "differential association theory", see: Caldwell, Criminology (N.Y.), 1956 pp. 181-186; Sheldon Glueck, Theory and Fact in Criminology, The British Journal of Delinquency, Vol.7, No.2(1956) pp.92-109.

18. See generally, Frank E. Hartung, White Collar Crime: Its Significance For Theory And Practice, Federal Probation, 17: 31-36, June, 1953.

19. Estes Kafauver, Crime In America (1952); Criminal Statistics, England and Wales, Home Office, London.

20. Friedmann, Law in a Changing Society (1959) p. 186

21. Article 39 (b) and (c) of the Constitution of India reads:

"39 - The State shall, in particular direct its policy towards securing -

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detrument."

22. Mannheim, Criminal Justice and Social Reconstruction (1946) Part I, Chapter VII.

23. Sayre, Public Welfare Offenses, 33 Col. L.R.55: The following is an illustrative list of such regulatory laws in India - The Indian Companies Act, 1956; The Essential Commodities Act, 1955; The Prevention of Food Adulteration Act, 1954; Industrial (Development and Regulation) Act, 1951; Imports and Exports (Control) Act, 1947; The Foreign Exchange (Regulation) Act, 1947.

24. Mannheim, Criminal Justice and Social Reconstruction (1946) pp.83 - 191.

25. Hall, General Principles of Criminal Law, Second edition (1960) pp. 327 - 31; Sayre, (Supra).

26. Muller, Essays in Criminal Science (1961); Morris and Howard, Studies in Criminal Law (1964), pp.197 - 222.

27. Morris, Albert, Criminology (1934).

28. Schwenk, The Administrative Crime, 42 Mich. L.R. (1943).

29. Sutherland, White Collar Crime (1949).

30. Ibid.(1961) p.9.

31. See generally H. Mannheim, Comparative Criminology, Vol.2, (1965) p. 471 - 498.

32. Tappan, Paul, Who is the Criminal, American Sociological Review, 12 (1947) pp. 96 - 102; Robert G. Caldwell, A Re-examination of the Concept of White Collar Crime, Federal Probation, (1958) pp. 30 - 35.

33. Sutherland, Crime and Business, Annals of the American Academy of Political and Social Science, September (1941),p.11

34. See Mannheim, Comparative Criminology, Supra, p. 472.

35. Sutherland, White Collar Crime (1961) p. 9.

36. Of considerable interest in this context are the following articles: Donald J. Newman, White Collar Crime, Crime and Correction, Law and Contemporary Problems, Vol.23, No.4 (1958) pp. 636 - 763; Wolfgang Friedmann, Law In a Changing Society (1959) Ch.6; Harmann Mannheim, Comparative Criminology (1965) Vol.I, Chap.2.

37. Wechsler, The Criteria of Criminal Responsibility, 22 University of Chicago L.R.

38. Robert G. Caldwell, A Re-examination of the Concept of White Collar Crime, Federal Probation, 22: 30 - 35 (March 1958)

39. Paul W. Tappan, Who Is The Criminal, American Sociological Review, 12: 96 - 102 (February 1947).

40. Hermann Mannheim, Comparative Criminology (1965) Vol.II P. 479.

41. Donald R. Cressey, Foreword to Sutherland's White Collar Crime (1961) P.V.

42. Ernest W. Burgess, American Journal of Sociology, Vol.56 (July 1950) pp. 32 - 34.

43. Mannheim, Comparative Criminology (Supra) P.479.

44. Ibid., P. 481.

45. Jerome Hall, Principles of Criminal Law (1947) Ch.x.

46. The following examples of strict responsibility may be noted: Sections 7, 16 and 19(1) of the Prevention of Food Adulteration Act, 1954; Sections 4 and 9 of the Opium Act, 1878; Section 14 of the Dangerous Drugs Act, 1938; Section 3 of the Essential Commodities Act, 1955; Section 8 of the Foreign Exchange (Regulation) Act, 1947; Section 5 of the Import and Export (Control) Act, 1947; Section 52-A of the Sea Customs Act, 1878.

47. Kenny, Outlines of Criminal Law, Ch. I, P.44.

48. Glanville Williams, Criminal Law, The General Part; Hall, Principles of Criminal Law (1947), Ch. X; Edwards, Mens Rea in Statutory Offences (1955).

49. Morris and Howard, Studies in Criminal Law (1964) pp.197-222 at P.201. The effect of substitution of negligence for strict responsibility and the transferring of the onus of proof to the accused (to establish that he acted with due care) would be as follows: "If from the statutory words no requirement of mens rea could be gathered, accused would be prima facie liable for conviction on proof by prosecution of actus reus only. However, accused should be allowed to exculpate himself by proving affirmatively that he was not negligent. The issue of negligence would be a question of fact to be decided according to the circumstances of each case.

50. Stephen J. in R vs. Tolson, 23 Q.B.D. 168; Lord Goddard C.J. in Brend vs. Wood (1946) 62 T.L.R. 462; Harding vs. Price (1948) All E.R. 283.

51. Roscoe Pound, Spirit of Common Law, P. 52.

52. Public Prosecutor Vs. Dhanpal (1962) 2 Cr. L.J. 701; Madan Lal Vs. State, A.I.R. 1961 (Cal.) 240; Nathu Lal Vs. State of M.P., 1965 S.C.D. (5) 870; Hari Prasad Rao Vs. The State, A.I.R. 1951 S.C. 204; Sarjoo Prasad Vs. State of U.P., A.I.R. 1961 S.C. 631.

53. Madan Lal Vs. State, A.I.R, 1961 (Cal.) 240 at p. 245.

54. Ayyangar J. in State of Maharashtra Vs. Mayer Hans George(1965) S.C.D. (5) 735 at P.772 and 775.

55. The Indo-China Steam Navigation Co. Ltd. Vs.Jasjit Singh, Additional Collector of Customs, Calcutta (1964) S.C.D.Notes 54 at p. 57.

56. State of Maharashtra Vs. Mayer Hans George, 1965 S.C.D. (5) 735 at p. 754; and also see Nathu Lal Vs. State of M.P. 1965 S.C.D. (5) 870 at p.873.

57. State of Madhya Pradesh Vs. Jogi Lal, 1965 (1) Cr.L. J. 43; Buddha Pitai Vs. S.D.O., 1965 (2) Cr.L.J. 306.

58. Friedmann, Law in a Changing Society (1959) P. 202.

59. Mannheim, Comparative Criminology II, Supra PP.481-483.

60. Sutherland, White Collar Crime (1949) P. 46.

61. John E. Simpson, Social Problems - Persistent Challenges, p. 443.

62. Sutherland, Crime and Business, Supra, P. 112.

63. Most of the studies in White Collar Crime have employed Sutherland's theory of differential association. Clinard supported it with some qualifications in his study on the 'black market'. Hartung in his study of the meat industry suggested that the differential association theory plus - Taft's ideas on exploitative society can explain white collar criminality.

.....

CHAPTER THREE

WHITE COLLAR CRIME IN BUSINESS, TRADE, COMMERCE AND INDUSTRY

Business Criminality in General:

The business world is generally believed to be more criminalistic than other white collar groups in modern society. Offences like breach of trust, cheating, fraudulent deeds and dispositions of property, forgery, falsification of accounts, using false property marks, adulteration of foods, drugs and other articles, bribery, corruption, misrepresentation in advertising goods and services and innumerable other malpractices involving violation of trust and fraud abound in this area of social activity.

The Santhanam Committee on Corruption in its report made the following observations, which may be noted with interest in this connection[1]:

> "2.14. Corruption can exist only if there is someone willing to corrupt and capable of corrupting. We regret to say that both this willingness and capacity to corrupt is found in a large measure in the industrial and commercial classes. The rank of these classes have been swelled by the speculators and adventurers of the war period. To these, corruption is not only an easy method to secure large unearned profits, but also the necessary means to enable them to be in a position to pursue their vocations or retain their position among their own competitors. It is these persons who indulge in evasion and avoidance of taxes, accumulate large amounts of unaccounted money by various methods such as obtaining licences in the names of bogus firms and individuals, trafficking in licences, suppressing profits by manipulation of accounts to avoid taxes and other legitimate claims on profits, accepting money for transactions put through without accounting for it in bills and accounts (on money) and undervaluation of transactions in immovable property. It is they who have control over large funds and are in a position to spend considerable sums of money in

> entertainment. It is they who maintain an army of liaison and contact men, some of whom live, spend and entertain ostentatiously. We are unable to believe that so much money is being spent only for the purpose of getting things done quickly. It is said that, as a large majority of the high officials are incorruptible and are likely to react strongly against any direct attempt to subvert their integrity, the liaison and contact men make a careful study of the character, taste and weaknesses of officials with whom they may have to deal and that these weaknesses are, then, exploited. Contractors and suppliers who have perfected the art of getting business by under-cutting, of making good the loss by passing off sub-standard works and goods generally spare no pain or expenditure in creating a favourable atmosphere. Possession of large amounts of unaccounted money by various persons including those belonging to the industrial and commercial classes is a major impediment in the purification of public life. If anti-corruption activities are to be successful, it must be recognized that it is as important to fight these unscrupulous agencies of corruption as to eliminate corruption in the public services. In fact they go together".

Fraud a-nd dishonesty seem to have been largely accepted as part of successful business practice and sometimes businessmen even try to rationalise and justify their anti-social and illegal conduct on the ground of expediency and general degradation in the standard of public life. The legal processes and controls, judging from past experience, have proved inadequate to cope up with the rapid strides in the industrial and economic sphere, with the result that many an anti-social activity continue unabated in this increasingly important area of human activity. Today, business fraud constitutes a particularly pervasive and insidious kind of crime that receives little public notice and condemnation.

There are reasons to hold business crimes to be more dangerous to society than the crimes known to traditional criminal law. Certain types of frauds in modern business practices involve very heavy financial losses both to the investing public and to the exchequer. For the United States of America, it is estimated

that the total losses from conventional robbery, theft and burglary amount to something between 250 and 400 million dollars a year whereas, the damage inflicted to the American public by just two types of business fraud, namely, bogus bankruptcies and the sale of bogus stocks and bonds, is estimated near about one billion dollars per year[2]. In India, a limited inquiry on just ten among the large number of Dalmia-Jain Group of Companies (Dalmia-Jain Group of Companies is the third biggest business enterprise in the country) revealed a loss of an estimated 3.5 crores of rupees as a result of fraud and improper use of funds of the concerned companies by the management.[3] According to the Santhanam Committee report during the five-year period from 1958 to 1962 licences valued at seventy million rupees were obtained or wrongfully utilised by nearly 700 firms through misrepresentation, forgery or other breaches of the export/import control regulations[4]. Illegal accumulation of foreign exchange through just one type of fraud - i.e., under-invoicing/over-invoicing of imports and exports - is calculated to be between Rs 40 to 50 crores every year.[5] In 1956 the amount of income tax lost through tax evasion was estimated at Rs300 crores per year.[6] These are random figures sufficient to indicate the enormous financial losses produced by some of the 'known' business crimes in India.

Equally great is the physical injury and even death caused from tainted foods and harmful drugs sold in violation of the anti-food/drug adulteration laws or through violations of health laws, labour and industrial safety laws and local municipal bye-laws.

Another serious result of business crime is the probable damage it does to the country's social, economic and political institutions. The increasing lawlessness in the business world and the misuse of financial and economic power by business houses to corrupt the public life in the country ultimately result in defeating the social, economic and political policies of the Government and undermining rule of law and democratic progress.

A still more undesirable consequence of violations of this nature is the serious erosion of morals that accompany them. Most of them are violations of trust of a highly complex and technical nature which affect the society not directly as ordinary crimes do, but indirectly and in a diffused form. Unscrupulous businessmen cloak their criminal behaviour in the implied trust of the large body of citizens who are usually unaware of their predatory operations. The investing public who form the innocent victims of many business crimes may not even know about the violations and the losses they have suffered for quite sometime, and by the time they come to realize the harm, legal proceedings would have become either impossible or useless. By cleverly exploiting the corporate form of business organization and the loopholes of the law, by dishonest exercise of political and financial influence, by deliberate destruction of evidence and avoiding legal proceedings[7] the businessman-criminal prospers in society amassing more and more unlawful profits. Prosecutions are often avoided because of the apparent triviality of the crimes or because of the difficulty in securing evidence sufficient for a conviction. The offences are often extremely

hard to detect especially since there is often no victim but the general public. Merely determining whether or not an offence has been committed frequently involves extremely complicated factual investigation and legal judgment. Public tends to be indifferent towards business crime or even to sympathize with the offenders when they have been caught. Because the public agencies of communication (like the press) are themselves controlled by businessmen; they do not express the organized moral sentiments of the community and help to keep public resentment towards business crimes relatively unorganized and inefficient.[8] These factors tend to encourage the businessmen-criminal to violate the laws with impunity. Commenting on the gravity of sentence desirable in black market violations under the Defence of India Rules, Bhandari J. of the Lahore High Court once observed in the course of a judgment:[9]

> "There is scarcely a person in this country who has had not the painful experience of having had to pay prices greatly in excess of those which, having regard to all the circumstances, may be regarded as fair prices. The series of Ordinances, Rules and Orders that have been promulgated by the Government for the protection of the consumer are still being openly defied. It may be that the number of cases which are brought to the notice of the Courts is incredibly small, but it must be remembered that at least two factors combined to prevent these offences being disclosed to the public authorities. The first is the feeling that it would be cheaper in the long run to pay the extra price than to go to the trouble and expenses of fighting a case in a court of law. The second is the somewhat cowardly fear of not being able to establish one's accusations. The offender who is usually the richer of the two litigant is often able to delay decision by a series of postponements, appeals, revisions and reviews and to complicate the issue by a mass of quibbles and legal technicalities. The inevitable result is that the ends of justice are defeated and the task of punishment is rendered exceedingly difficult".

A great American criminologist[10] characterized this situation in contemporary society in the following words: "The most powerful group in medieval society secured relative immunity from punishment by 'benefit of clergy' and now the present most powerful group secures relative immunity by benefit of business!." The statement is largely true of Indian 'big business' today. With enormous economic and consequent political power at their disposal, the modern industrialists and businessmen occupy a key role in society. They align themselves with friendly politicians, contribute heavily to the funds of political parties and sometimes put their own candidates in political elections. Very often they engage themselves in the political processes of the country with a view to get unfair advantage in their business activities from governments and local bodies. They dishonestly induce a large number of politicians and administrators by various kinds of bribes and allurements, future employment and shares in commercial enterprises and thereby secure lush governmental contracts, freedom from public regulation of their anti-social ventures, tax reductions etc., etc. Their fraudulent manipulations and dishonest machinations result in a situation wherein the legislators who make laws regulating business and the administrators in Government who appraise them are reluctant to antagonise the 'prospective violators' of those laws and think that they would conform to the law by gentle persuasion and friendly advice! This attitude tends to promote the view that business violations are not crimes but only technical breaches of the law not deserving deterrent punishment provided by the law. Sutherland's characterisation of this situation as 'benefit of business'

is very apt description of the relative immunity of the business community today.

The increasing governmental control of business and industrial activity is naturally inconsistent with the laizzez-faire concept of free enterprise and the business philosophy based on it. According to the traditional view, business is considered to be any occupation whose sole object is making profit. As it is said, the business of business is gain and more gain. It has nothing to do with standards and principles. Each businessman is free to gather his gains in any manner and by any means he considers desirable and expedient. Businessmen have developed an arbitrary and unique moral code, according to which, business laws are invalid, unnecessary and therefore, can be disregarded. Those wedded to this outmoded philosophy of a bygone age find it really difficult to reconcile with the changed situation of increasing public control of private enterprise and to carry his occupation within the limits prescribed by law. They fail to appreciate the social responsibilities of business and industry in a Welfare State. It is this failure on the part of the business community that accelerated the pace of regulatory legislations in India after Independence. A series of business laws enacted in the last two decades make many types of business practices illegal.[11] However, the rapid growth of corporate form of business organization and its concomitant result of "impersonal monopoly", "absentee ownership" etc., complicated the scene of twentieth century business dynamics and gave a cover for dishonest businessmen to practise manifold forms of fraud, deception and cheating.

The past record of the business community easily supports the theory that business morality is different from, and often times, in conflict with, the morality of the general community as embodied in the laws. Notions of ethics and morality take on special meanings when applied to business. What is socially good and desirable may not be so from the businessman's point of view. A large proportion of modern welfare laws were enacted because it was plain enough for any reasonable man to see that what was good for business was often the exact reverse for the community in general.

Discussing the behaviour of the Indian traders during the National Emergency and the period of acute scarcity in food and consumer articles, a foreign observer wrote:[12]

> "Business communities in India of large and small merchants, are basically a dishonest bunch of crooks ..... While it is true that the object of businessmen is to make profit, there are degrees and degrees of making profit, and nowhere in the world do businessmen get rich so quickly as they do in India, nor can anyone even remotely imagine how it is possible for anything but a beast or a group of beasts to corner large quantities of baby food and adulterate it."

Advocating deterrent punishments for food adulterators, profiteers and black-marketeers the author expressed her indignation in the following words:

> "An 'A' class prisoner in India in gaol lives a reasonably comfortable life. Food profiteers and those who adulterate, should always be 'C' class prisoners, for they are 'Z' class citizens, and their confinement in gaol should be one of continuous hard labour. They should be banned for life, as they are in Western countries for similar crimes against humanity, of every dealing in any kind of foodstuffs. Fining a paltry Rs.2000/- is a mockery of justice. The wretched creature earns that amount with one flick of his dirty finger. It is not at all impossible to introduce flogging in a democratic

> country, and to those who think that this sort of punishment is an extreme or barbaric one, let them see their own babies die after partaking of spurious baby food, and they will think that flogging is too good for such butchers."

Despite widespread public resentment against increasing criminality in the business world, paradoxically enough, the businessman-criminal prospers in society more easily than the traditional criminals. One writer has explained this situation in terms of the considerable moral standing the businessman-criminal enjoys in modern society. As he put it:[13]

> "The income-tax evader or the black marketeer is too close a relative of too many of us to be regarded with the horror and contempt that a criminal theoretically deserves. As a matter of fact, public complicity in business crimes is not only moral and psychological; it is physical as well. In business there can be no sellers without buyers. Each one of us, at one time or another, has a need, real or fancied, for some commodity or service that is impossible to get legally. It is obviously quite difficult for us to treat the businessman who sells whatever it is we want as a criminal unless we are willing to treat ourselves as criminals too."

Today, public complicity in business violations is a common phenomenon in India. People do not seem to realize the great danger involved in the practice of colluding with law-breakers, sympathizing with them and even patronising such criminals to serve their immediate needs unlawfully. This has resulted in making enforcement of laws difficult and corruption widespread.

While reiterating the widespread prevalence of criminality amongst businessmen in general, one will have to admit that there are number of honest, law-abiding business people also who are conscious of their social obligations and public trust. It would be inconceivable to think otherwise.

But, unfortunately they form only a minority and even among them a good section approved and sometimes actively supported the abominable and extortionate practices in their ranks. Having far greater knowledge than the general public of the dishonest and fraudulent methods being adopted by their fellow-businessmen, they did not discourage them personally or through their professional organizations. They did not dissociate themselves from that unscrupulous section, nor did they condemn them publicly. Instead, they voluntarily worked with them for common gain. They even supported the appointment of businessmen having dubious records as their spokesmen and elected them to high posts in their professional organizations.[14] All this tended to tarnish the public image of the business community in India and projected them as a basically dishonest group easily prone to criminal tendencies.

Type and Extent of Business Crimes:

Unlike the case of traditional crimes, business violations are seldom reported in crime statistics, police reports or in the press. Many of the violations are so complex that require experts even to detect, and many more are so diffuse and slow in their effect that it would take years before the harm is felt by the victim. The victim in many cases is that undefined entity, the public, which is unorganized and incoherent to give any effective opposition to the perpetration of the evil by the unscrupulous section of the business community. Price resistance movements, consumer protection services, co-operatives etc., have yet to take strong roots in India and, as they exist today, they are ineffective against

the overwhelming and organized power of the business community.[15] This is a danger that is real and great in business crimes. This situation creates many problems in the field of criminal administration of business laws. In the absence of regular reporting of the types and number of business crimes it is indeed difficult to make a thorough study of the subject. Many businessman-criminals remain unidentified in the public eye and they continue to enjoy status and respect in society. An occasional official inquiry on persistent public demand or answers given to questions in Parliament, or published reports on the working of some of / the sources of information about criminality in big business. It is on the basis of such disjointed and occasional official reports and few personal studies through interviews and questionnaires that this study is formulated.

the enforcement agencies of the government are

One has only to read some of these official reports[16] to know about the modus operandi and the ever-changing types of business dishonesty even in times of national difficulties. The frauds and malpractices indulged in by Indian big business have increased greatly over the past few decades despite a multiplicity of regulations and enforcement agencies of the Government.[17] There are innumerable methods, a fraction of which alone could be known to the world outside, practised by the directors of joint stock companies who, living in the lawful shade of society, use other peoples' money for their own profit.[18] They are known to interlock funds and positions to benefit themselves and their relations, squeeze competitors out of existence for monopolistic control of the market, float factories and companies on paper only for unlawful ends,

forge spurious share scrips for raising public money, secure quotas, licences and foreign exchange by dubious and underhand methods and play ducks and drakes with public funds for their personal aggrandisement.[19] They evade taxes on a stupendous scale and avoid taxation on a large part of their income. Some of these ingenious men set up bogus companies and invent non-existing, fictitious persons to subscribe to shares of their 'companies' with a view to split profits in paper and thereby avoid taxes. Under-invoicing of exports and over-invoicing of imports is their stock-in-trade and the amounts thus made are held by their agents in foreign countries or by their foreign collaborators in business, thus placing an illegal stock of foreign exchange in their hands. All these machinations in turn lead to the accumulation of black money that pass hands unlawfully without public account. Thus they hold the economy of the country at ransom to satisfy their greed for profit and power. They even bring the good name of our country into disrepute by cheating our foreign customers, exporting substandard goods and goods of lesser quantity. They engage the best available brain in the country to manipulate their balance-sheets and to find out the loopholes in the law to overcome difficulties. They bribe the auditors and public officials and thereby contaminate our professional services. They take public concerns into voluntary liquidation, as and when they choose and destroy records and other evidence in order to cheat the unsuspecting public and the exchequer.[20] The failure on the part of the business community to behave and the neglect of social responsibilities of business have even led to the demand by a section of the public for the

nationalisation or at least social control of the major economic occupations and activities.[21]

Some of the dishonest practices and manipulations of businessmen, though expressly not against the strict letter of the law, is violative of its spirit and objectives. The annual reports on the working and administration of the Indian Companies Act, 1956 provide a long list of unsound company practices, indirect and tortuous evasions of the law which, though not always directly contravene the letter of the law, defeat its purpose and are almost always repugnant to its spirit. The profit motive however, legitimate it might be as a rule for conducting business in a free society, may become a source of criminal temptation in individual cases. Carried beyond a certain point, it degenerates into fraud. Somewhere, then, legitimate business merges into crime and many of the now legally acceptable business practices are socially and morally more reprehensible than the legally prohibited ones. Indeed there is only a thin line between "successful business enterprise" and some business crimes. Sometimes it seems as though the feverish drive to make money, to vanquish competitors, to climb to the top of the economic ladder, demand all sorts of thinly veiled misrepresentations, exaggerated claims, shady deals, use of shoddy materials, and sharp practices which lie on the periphery of crime. In the area of business crimes, the gray zone, lying between the black and white of right and wrong, is very significant for it closely touches on criminal categories. This is evident from the findings of administrative agencies responsible for the enforcement of business regulations.

A list of a few unsound company practices detected by the Department of Company Law Administration of the Government of India in the past few years is given in Appendix I. Two of the common forms of business crimes which are noted for their pervasive and influential character namely, tax evasion and food and drug adulteration, are separately dealt with in subsequent chapters.

The number of business crimes, and the measure of evil resulting therefrom, cannot be accurately ascertained. The vigilance of official departments, enforcement agencies and prosecuting machinery of the Government could not make any effective check in the depredations of profit-hungry businessmen out to establish their industrial and business empires at the cost of general well-being of the community and social good. The Government have been active only in promulgating laws regulating harmful business dealings and not in their proper enforcement.[22] Even the laws are found inadequate to curb the evils intended to be avoided in society. A multitude of enforcement agencies, many of them ill-equipped for the job and each looking after a part only of one particular area of business crimes, have only promoted confusion and uncertainty which in turn helped the dishonest traders and businessmen.[23] Absence of systematic reporting of business violations and lack of coordination and concerted action amongst the agencies responsible for the enforcement of business laws make it really difficult to bring out any clear idea of the extent of criminality in this field.[24] It need not be explained here that the actual

number of prosecutions launched by these Government agencies in a given period represent only a fraction of the violations that have taken place during that period. However, some of the official reports reveal the fact that more often than not business crimes are not discreet and inadvertent violations of technical regulations but deliberate, consistent and well-planned.[25] This would indicate that a large proportion of these offenders are recidivists by ordinary standards, and the present law and procedure have been really ineffective in deterring them from their anti-social and illegal activities.

An idea of the increasing violation of law among big business and financial interests in the country is provided in the annual reports on the working and administration of the Indian Companies Act published by the Company Law Administration Department of the Government of India. The progress of prosecutions under the Act for the ten-year period from 1956 to 1966 is summarised in the following table.

The above table indicates that during a period of ten years i.e., between 1956 - 1966 a little over 38,000 prosecutions involving as many as 8,700 companies were launched. This figure, of course, represents only a fraction of the total number of known violations, many of which may not have been detected. In many other cases the Department might have satisfied itself, as it often does, by issuing warnings or friendly advices. The average prosecution per company ranges from four to six. The percentage of increase in prosecution cases as compared to 1956 - 57 was 1,096.5 per cent in 1960-61 and 307 per cent in 1965-66. This is indicative of the fact

T A B L E I

PROGRESS OF PROSECUTIONS UNDER THE INDIAN COMPANIES ACT, 1956-1966.*

	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64	1964-65	1965-66
during ...	165	235	631	1,043	1,220	902	983	1,520	1,020	1,494
ing ...	572	1,305	2,498	5,252	6,272	3,990	3,687	5,591	3,018	4,525
the r ...	738	607	839	1,642	3,699	2,941	1,506	2,204	2,824	1,829
during ...	1,310	1,912	3,337	6,894	9,971	6,931	5,193	7,795	5,842	6,364
...	577	494	1,055	2,596	6,070	4,579	2,591	4,588	3,480	3,626
...	52	156	166	148	217	253	122	82	59	30
of f ons)	74	423	474	451	743	593	276	301	474	253
the ...	607	839	1,642	3,699	2,941	1,506	2,204	2,824	1,829	2,455
... Rs.	28,954	34,459	18,995	2,43,913	3,46,776	3,13,245	3,25,318.40	5,64,975.85	4,55,141.71	580871.37
as ers.	3,082	3,998	13,943	43,998	78,624	99,439	97,571.23	1,56,720.42	1,37,094.90	182359.41
tion nt .	**	19,054	7,734	5488	7,329	14,205	21,333.71	13,815.75	5,950.10	5951.05
se 56-57	...	128.1	336.2	818.02	1,096.5	697.6	644.58	977.44	528	807
tions to ...	82	47	62	81	86	84	87	92	87	93

that despite the law the corporate sector could not be deterred from its illegal practices. It may be noted that the statistics given above relates only to contraventions of one particular statute, namely, The Indian Companies Act, 1956. As stated earlier, there are a multitude of business laws designed to create and maintain social standards in business activity (Appendix II) of which data on violations are available only in few cases. Violations under The Drugs and Cosmetics Act, 1940, The Prevention of Food Adulteration Act, 1954 and the various tax laws are separately dealt with elsewhere in this study.

Regarding a great deal of special laws like Foreign Exchange Regulation Act, Import and Export (Control) Act, Essential Commodities Act etc., no statistics are available apart from a few references here and there in official documents. Illegal transactions in foreign exchange between dishonest business men in India and their agents or foreign collaborators abroad have been causing serious drain of the foreign exchange resources of the country.[26] Difficulties in conducting proper inquiries in foreign countries and the necessary delay involved in the process of investigation of exchange violations have helped the criminals to avoid prosecutions and extend their nefarious activities. Secret hoards of foreign exchange are built up abroad by Indian businessmen through under-invoicing of exports and over-invoicing of imports.[27] A substantial volume of exchange thus built up is said to be unauthorisedly used for repatriation of foreign capital and profit on foreign investments.

According to the reports of the Enforcement Directorate (Foreign Exchange Control) of the Ministry of Finance, Government of India, violations of foreign exchange regulations are on the increase and, in most of them, the parties involved are prominent business concerns and/or their directors or partners. In 1960-61 alone as many as 3,645 cases were registered by the Directorate for investigation which related mostly to unauthorised purchase, borrowing and lending of foreign exchange, maintenance of accounts in banks abroad, unauthorised use of foreign exchange acquired, making payments to or on behalf of non-residents and non-realisation of full export proceeds. A total penalty of Rs.91 lakhs was imposed on parties proceeded against in 1472 cases by the Director of Enforcement.[28]

Breaches of imports and exports (control) regulations have become a common phenomenon and the number of prosecutions are swelling year after year. During the five-year period from 1958 to 1962, as many as 548 firms obtained 660 licences valued at Rs.2,38,24,149 by misrepresentation or on the basis of forged documents. Again during the above period another 361 firms wrongfully utilised 717 licences valued at Rs.4,45,10,784 which they had obtained under the category of "actual users". Commodities imported on the basis of 'actual user' licences were sold in the black market. It is estimated that each licence would fetch anything between 100 per cent and 500 per cent of its face value, when sold.[29]

The reports of the Indian trade representatives abroad uniformly speak of the increasing number of complaints

received by them about consignment not conforming to samples, defective qualities of the goods exported, inadequate packing and consequent damage of goods.[30] Sometimes our dishonest exporters cheat foreign customers by packing better goods above and shoddy goods below. The inadequacy of law and enforcement relating to grading, standardization of goods, quality control and pre-shipment inspection have been fully exploited by the unscrupulous section of Indian big business causing serious reverses in our export trade and damaging the country's image abroad.

In the matter of import trade the so-called established importers have amassed excessive profits because of the great divergence between the domestic prices and the c.i.f. prices of the commodities imported. In many cases such profits are in the nature of unearned increments arising from the change in foreign exchange position of the country as a whole. Further, according to conservative estimates foreign exchange worth Rs.40 to 50 crores is lost to the nation every year due to the evil of under-invoicing/over-invoicing of imports and exports.[31]

In modern complex and ever-changing business dynamics one can find loopholes in the law regulating it for exploitation, fraud and evasion of legal obligations. The annual reports on the working and administration of the Indian Companies Act, 1956 provide an astonishing array of unsound company practices detected every year.[32] As and when the law is amended and loopholes eliminated, dishonest business interests lose no time in inventing new methods to overcome the provisions of the law that put restrictions on their unlawful pursuits. The low ebb of

corporate morality in India and the scant regard on the part of big business for fiduciary obligations and social responsibilities are evident in ample measure in the report of the Commission of Inquiry on the administration of Dalmia-Jain Companies.[33] A brief analysis of the 815 page Report is necessary for a fuller appreciation of the fraudulent deals and malpractices practised by an important segment of India's big business.

Report of the Commission of Inquiry on the Administration of Dalmia-Jain Companies : A Resume:

The Dalmia-Jain Group, according to a survey by the Federation of Chambers of Commerce and Industry, is the third biggest business establishment in India. In December, 1956, as a result of a series of allegations regarding gross irregularities and illegalities in a large number of companies under the management of Dalmia-Jain Group, the Central Government appointed a Commission of Inquiry to inquire into and report on the administration of the affairs of nine companies and of such other companies of the Group the Commission might deem necessary for this purpose. The Commission was asked to report on the nature and extent of the control direct and indirect exercised over such companies and firms or any of them by M/s. Ramakrishna Dalmia, Jaidayal Dalmia, Shanti Prasad Jain, Sriyans Prasad Jain, their relatives, employees and persons connected with them. The other items the Commission was asked to report on, inter alia, included:[34]

1) The total amount of the subscription obtained from the investing public and the amount subscribed by the aforesaid persons and the extent to which the funds and assets thus obtained or acquired were misused, misapplied or misappropriated;

ii) The extent of the losses suffered by the investing public, how far the losses were avoidable and what steps were taken by those in control and/or management to avoid the losses;

iii) The nature and extent of the personal gains made by any person or persons by reason of direct or indirect control over any such company or companies;

iv) Any irregularities, frauds or breaches of trust or action in disregard of honest commercial practices or contravention of any law in respect of the companies and firms investigated.

The Commission, hereinafter named after its Chairman as Vivian Bose Commission, which took more than five years for the completion of its work, reported of a series of procedural difficulties as a result of frequent petitions to the High Courts and the Supreme Court, non-cooperation of persons in the know of things, refusal or failure of people to give evidence, deliberate destruction of books and records and many other repeated attempts to obstruct the inquiry. In the words of the Commission[35]: "Persons who could have explained matters on account of their intimate association deliberately with-held all relevant information. Records of some of the important companies were not available. The plea was that they were at Dacca. The others were destroyed deliberately by the persons in control in order to thwart any enquiry." Referring to the repeated petitions before the High Courts and appeals before the Supreme Court and also applications before the Commission the report said[36]: "No other Commission of Inquiry has had to meet so many legal objections and overcome impediments calculated to defeat the inquiry". The Commission further observed that, "evidence that would have been material was deliberately with-held and most of our efforts to get at the truth were successfully foiled."[37] However, on the basis of available materials and evidence,

the Commission had held five of India's top industrialists, collectively known as the Dalmia-Jain Group, responsible in different degrees for fraud, mismanagement, manipulation of accounts, destruction of records, personal gain at the expense of the investing public, avoidance of taxes and a number of other irregularities and violations of trust. Among the irregularities are included unsound loans and advances, improper transfer of assets of one company to another, liquidation of public companies after they have been squeezed dry, appointment of own men as selling and managing agents on fantastic remuneration, manipulation of accounts through make-believe balance sheets, keeping non-existent and fictitious shareholders for splitting of profits and other unlawful ends, maintaining 'dummy' directors for effective control of public companies and avoidance of tax in a large scale.

It was contended before the Commission that the "D.J.Group" was dissolved as early as May, 1948 and thereafter no such group existed. But this story was disbelieved by the Commission after a thorough judicial examination of the evidence adduced.[38] The Commission found the affairs of the group "so interlocked and complex because of black money and secret, undisclosed assets and undetermined income tax liabilities that this was found not to be easy though the members of the Group did explore the possibility of re-organising themselves or effecting a dissolution by stages."[39]

The main findings of the Commission are as follows:

(A) Abuse of Control:

"Our investigations disclose", the Commission reported,[40] "that the funds of public limited companies, banks and insurance

companies were improperly used for buying shares of other companies with large accumulated resources and substantial liquid resources in order to obtain control over them ..... This was done for improper ends. The object was to use the accumulated funds of these companies for the benefit of the D.J. Group or R. Dalmia or for the benefit of some private companies in which the group or R. Dalmia were interested ..... In those cases it was always the public companies that suffered and the investing public along with them. The wrong lay in the fact that those who were in control wrested an improper advantage for themselves from the companies that they controlled and let the companies under their control suffer." The ways in which these objects were achieved were:

(i) Loans and Advances:

The Commission pointed out that several companies in which public had invested their money were made to give loans and advances without security and at low rates of interest to not only companies in which the group or R. Dalmia was interested, but also to R. Dalmia personally to the advantage of the latter and to the detriment of the former. The debts outstanding against Dalmia increased in a 'rising crescendo' year by year.

In many cases large amounts were loaned to companies whose financial position was unsound. Also, in most of these cases, though the loans were given in cash they were not repaid in that form but were shown as realised by means of 'book adjustments'.

(ii) Improper transfer of Assets:

Improper transfer of the assets of one company to another with the object of benefiting the D.J. Group or R.Dalmia and thus causing loss to the investing public was another abuse of control. Inter-company investments by mere book entries was a favourite method. These entries purported to show that subscriptions to share-capital were made in cash though in fact no cash was received, that the shares were purchased and sold in the normal course of business while in fact the rates were manipulated with the object of benefiting the D.J. Group or R. Dalmia, and/or the companies in which they or he were mainly interested. The Commission found in some cases the same block of shares appearing as assets in the Balance Sheet of one company and within a few months, by mere book entries, they appear as assets in the Balance Sheets of other companies.

(iii) Liquidations:

According to the Commission, even the procedures of the courts and arbitrations were pressed into service by R. Dalmia to achieve his unlawful ends. Liquidation of companies was a device frequently employed. "After the public companies were squeezed dry the husks were discarded and destroyed. The favourite method was to bring the company to voluntary liquidation, appoint a willing liquidator who fell in with the 'scheme', get a scheme of arrangement sanctioned by the courts, hand over all the assets and records and books to a purely R. Dalmia concern in which the directors were the tools of R. Dalmia, and then get the transferee company to destroy the books and records so that traces of the frauds and manipulations were destroyed."

According to this device, D.J. Airways was liquidated and its assets transferred to a new company - D.J. Aviation; the S.S.B. Mills and M.D.M. Co. were liquidated and assets transferred to South Asia Industries; Vastra Vyavasaya Ltd., was liquidated and assets transferred to Bharat Union Agencies, the Dalmia Cement and Paper Marketing Co., was liquidated and assets transferred to Delhi Glass Works Ltd. These liquidations took place in 1951 and 1953. Nineteen other companies were taken into voluntary liquidation within a period of five years from 1951 to 1956.

While the formalities and procedures prescribed by the law were followed in the case of liquidations, its weaknesses were exploited to defeat its objective. It is pointed out by the Commission that the safeguards provided by law would not work unless the assumptions on which they were founded existed.

The first assumption is that there is an intelligent and alert body of shareholders able to look after their own interests. In the case of most of the companies investigated, the shareholders were scattered and the registered offices of some of the companies were situated in 'inaccessible places'. The Commission found that the so-called general meetings and extra-ordinary general meetings of the shareholders were usually a farce.

The next assumption is that there will be independent liquidators who will be alert to safeguard the interests of the general body of the shareholders. The Commission had found some of them "willing tools in the hands of those in control." Audits

are also necessary safeguards against mistake, negligence and fraud. But here again everything depended on the honesty, competence and thoroughness of the audit. In this connection, the Commission had censured the conduct of two liquidators and found at least one of the auditors of the Dalmia-Jain companies dishonest and his auditing of no real value.

The Commission found even the machinery of the courts inadequate to "unearth hidden flaws and frauds". According to the Commission, "unless the Courts are equipped with personnel well versed in Company Law and practices and are given adequate machinery to look into malpractices it is impossible for them to function effectively. When there is collusion between all who appear before the Court, and the Judge is presented with facts that appear fair and proper on the surface, what else can he do but sanction the scheme put forward! "

The Commission concluded: "The cases before us show that unscrupulous men with money who can buy brains at will, know of these weaknesses (of law) and exploit them to their own advantage. R.Dalmia had no difficulty in walking straight through all the so-called safeguards, and indeed, at times treated them with contempt, as his conduct in thwarting the investigation into the affairs of some of his companies by the inspectors appointed under the Indian Companies Act shows..... In our case also we have found it impossible to get at the whole truth."

(iv) Selling and Managing Agencies:

The Commission also observed that R. Dalmia and the Group often tried to enrich themselves by not only appointing their concerns as selling and managing agencies of public companies, but also by deliberate and premature termination of those agencies which enabled them through their concerns to obtain heavy compensation. This ingenious device to draw monies from public companies under their control thus consisted in arranging for selling agency agreements with a company over which he/the Group had control and contriving a breach of the agreement to be caused and then arranging for a make-believe settlement of a large amount of compensation to be paid to the selling agents as a result of the breach. Thus, in one case, a managing agency, due to last for twenty years, was terminated within 16 days and compensation exceeding Rs.1.19 crores was paid.[41]

In another case, the Commission pointed out, the appointment of Mr. Shriyans Prasad Jain to a post in one of the concerns at a monthly remuneration of Rs.9,400/- which was for 25 years, was terminated at the end of seven years and Mr.Jain was paid Rs.7 lakhs in compensation; and that too by a company that was unable to pay its ordinary shareholders any dividends from 1941 onwards and its preferred shareholders from 1943. "Incidentally, the Commission added "the case of Shriyens Prasad Jain shows how the relatives and members of the D.J. Group came in for their share of the pickings from public companies ....." It is true that DCPM was almost 100 per cent R.Dalmia at that time; but it got funds from the public companies. It could not

have paid these sums without getting the money from elsewhere. This was one of the many means devised to syphon off money from public companies into the pockets of D.J. Group, their relatives and their concern."[42]

(v) Manipulations:

About manipulations, the Commission tersely recorded: "We have found a number of instances in which books of account, Balance Sheets and Profit and Loss Accounts were manipulated."

The report narrated the case of a public limited company, Dalmia-Jain Airways Ltd., floated ostensibly for the purpose of carrying on air transport business (the reason for the floating of this company in that form was that, at that time, airline business was very much in the public eye and there was a big demand for shares in such companies) but actually to draw money away from the public company and drain it into Allenberry & Co., over which R.Dalmia had complete control.[43] Even from its very inception the promoters had never intended that the huge sum of over Rs.319/-lakhs raised by public subscription towards the share capital should be utilised for such business. They had only intended to form a private company for carrying on a totally unrelated adventure, namely, purchasing surplus motor vehicles and spare parts and machinery left by the American forces at the end of the last War, and reconditioning the vehicles and selling them at a profit. The attempt was to run a skeleton air transport as a make-believe show. The memorandum of association of the company included an omnibus clause that gave power to the company to deal in

vehicles of all kinds. The prominence given to the ostensible object made the public believe that the company would really conduct the business of air transport. The memorandum having comprehended within its scope the dealing in motor vehicles and spare parts, the persons in control without reference to the shareholders and even to the controller of capital issues who had authorised the issue of the share capital, were able to divert the funds so obtained into the surplus motor vehicles and spare parts business. Though its funds were freely utilised for acquiring the surplus motor vehicles and spare parts, the public company did not get the profits from the deal. The profits went to the private company which entered into the contract for the purchase and the public company suffered a huge loss in the result.

In 1952, on the basis of complaints made by shareholders about suspected mismanagement of D.J. Airways, the Government ordered an investigation into it under the Indian Companies Act. Soon after D.J. Airways was taken into voluntary liquidation. About the conduct of the liquidator the Commission commented: "..... We cannot but arrive at the inevitable conclusion that C.P.Lal (the liquidator) was in conspiracy with R. Dalmia to prevent any action being taken against the directors and officers for mismanagement and this can be borne out also by the amount of fees sanctioned for his appointment, namely Rs.52,500/- of which he eventually repaid Rs.20,000/-."[44]

Again, the report of the Commission of Inquiry has brought to light cases where, for the purposes of misrepresenting the state of affairs of a company, or for the purposes of unjust enrichment of the persons in control of a company, or for purposes of window-dressing of the balance sheet, shares were shown as having been transferred to the company but yet continued to be held by individuals.

The Commission has adverted to a case where shares to the extent of Rs.16 lakhs in a public company were applied for on behalf of non-existing shareholders. Benami shareholding and shareholding in the name of fictitious or non-existing persons were found to be common practice. The object invariably was to avoid tax and defraud the revenue in cases where the super-tax limit is reached.

Instances have come to the notice of the Commission where the practice of holding shares on 'blank transfers' registered in the names of third parties, adopted for the following purposes:

(i) To facilitate window-dressing of balance sheets of companies by reshuffling of shares held on blank transfers between associated companies with the object of substituting inter-company loans and advances at the time of the closing of the accounts by investments, and

(ii) To bring into existence fictitious or ante-dated transactions in the books of companies in order to create fictitious losses in investments for the purpose of reducing the taxable profits.

The Commission found that full advantage was taken by the fact that the companies had different financial years to manipulate inter-company loans, transfers and investments. In particular this enabled the same blocks of shares to be

moved from company to company in order to give a false appearance of prosperity to companies that were not doing well, and in order to manipulate the profits and losses for the year.

The Commission has adverted to the "dummy directors" who were mere puppets in the hands of another remaining in the background. Paid employees (typists, steno-typists, personal secretaries etc.) uneducated women and young and inexperienced relatives were all on the board of directors, whereas a person who was not on the board wielded authority over them, staying in the background and retaining effective control over the assets and activities of the company. These persons, when it came to fixing responsibility, pleaded helplessness and pointed to the person who controlled their actions and called themselves variously as 'nominee directors' or 'benamidar directors' or 'dummy directors' remaining on the board only to carry out the directions of that other person. This was the sorry state of affairs the Commission found in regard to the companies investigated.

(vi) Non-declaration of Dividend:

Another abuse of control by the Group was not to declare dividend although the companies concerned made profits. This had the effect of depressing the value of the shares and enabled R. Dalmia to purchase the shares at reduced rates and thus cause considerable loss to the investing public. Once a sufficiently large number of shares were acquired the dividends were declared and R. Dalmia reaped the profits. That happened in the case of all the ten companies inquired into except Allenberry and the Lahore Electric Supply Company."

(vii) Avoidance of Income-tax Liability:

In considerable detail the Commission had set out numerous methods used by the companies of the group to avoid income-tax liability. These include suppressing taxable profits by manipulation of accounts, extinguishing reserves and accumulated profits before taking the companies into liquidation, introduction of secret profits under cover of share money by allotting shares to non-existent persons, and transfer of assets and liabilities of companies that were taken into liquidation while their income-tax liabilities for the period upto the dates of liquidation were yet to be determined.

(B) Nature and Extent of Personal Gains and Responsibilities:

The Commission has estimated that the personal gains of R. Dalmia made by him or through companies that were wholly, or almost wholly, owned by him amounted to Rs.2,60,22,781 between 1946 and 1956. This amount made at the cost of the investing public does not include, according to the Commission, the gains made by Allenberry - a company of the D.J.Group and subsequently under the control of R. Dalmia - because of the absence of books and records. However, according to the Commission the gains made by Allenberry was nothing less than Rs.75,59,535. For the same reason the Commission was not able to evaluate the exact benefits obtained by other members of the Group. In the words of the Commission: ".....We have been hampered by the destruction of books, in particular those of Dalmia Cement and Paper Marketing Company. This company was a clearing house through which advances from sound public companies flowed to the

companies in which the Group or one or more of its members had a predominant stake, and it was also a repository for the ill-gotten gains of the Group. These gains did not necessarily flow to R. Dalmia or his companies only. By devious means, it has gone to others as well though in a disguised form."

Apart from the personal gains at the cost of investing public, at least four companies owned by the D.J. Group and/or one or more of its members, in particular, R. Dalmia, made gains at cost of exchequer by evading or avoiding taxes. Although the profits have been shown to have been made by the companies, such companies were wholly, or near wholly, owned and controlled by the D.J.Group and later by R. Dalmia. The profits carried by such evasion and avoidance of income-tax amounted to Rs.1,45,19,790.

The report of the Commission apportioned responsibility individually to the persons concerned with the frauds and malpractices it has detected. About Ramakrishna Dalmia the Commission observed[45]: "The evidence shows that he was the mastermind behind all the various malpractices into which we have inquired. It shows that he was in control of all the companies under investigation and that nothing of importance could have been done without his knowledge and approval, and in many cases without his orders. He probably did not know of every detail and was probably content in many cases to plan and direct the general strategy leaving its implementation to subordinates who were placed in the open in order to screen him. They were expected to take the blame should things go wrong ..... We are satisfied that no major matter, even of implementation could have been

carried out without his knowledge and approval. We, therefore, hold him responsible for every malpractice that we have dealt with, especially as he has not denied them in any verified written statement before us."

The responsibility of Shanti Prasad Jain was found to be three-fold in nature - as a member of the Group, as a director, and as an individual who took a personal part in some of the transactions examined by the Commission. His responsibilities as a director was considered more serious because "he was not a dummy and, in some cases, was the key man, second only to R. Dalmia. He tried to evade responsibility as a director whenever anything crooked or questionable came to light by saying that he was there only in name at that time and that he took no 'interest' in the concerns because of the dissolution of the group and so forth. He also tried to throw the blame on other directors. We have not believed him." Apart from this he was found by the Commission to be actively associated in the third capacity in at least four fraudulent transactions. The Commission similarly believed that others in the Group namely, J. Dalmia, Shriyans Prasad Jain and Shital Prasad Jain were also directly concerned with the different fraudulent transactions considered by the Commission and actively associated themselves in carrying out most of the manipulations.

The above summary of the report of the Commission of Inquiry on the administration of the Dalmia-Jain companies is illustrative of the unscrupulous manner in which an influential

section of big business in India operate for extending its financial and industrial empire.

There are many other business groups in the country having an equal, or even worse, criminal record as the Dalmia-Jain Group. Statements in Parliament and reports in the press indicate that the state of affairs in certain other big business houses are equally unsatisfactory and they have escaped indictment by virtue of their political and economic influence. The Mundhra Group of companies have a notorious criminal record. In the words of Mr.Chagla[46], who conducted the inquiry in respect of the investments of large amount of public money by the Life Insurance Corporation of India in Mundhra concerns, "Mundhra is a flamboyant personality and a financial adventurer whose only ambition is to build up an industrial empire by dubious means." Starting from scratch with no education and no means, he succeeded in acquiring control of several large business concerns and industrial undertakings. He bought a number of concerns sold away by the British business interests soon after Independence without possessing either the experience or the background necessary for successful working of those large enterprises. His conduct showed that he is a financial wizard who can swallow up concern after concern by transfering funds nonchalantly from undertaking to undertaking and by interlocking directorships.

The reports of the Company Law Administration record about 124 prosecutions against Mundhra, and companies owned/controlled by him between the years 1958 and 1960 in various courts in the country. Among the 116 cases disposed of during

this two-year period, 113 ended in conviction.[47]

An extremely abominable practice indulged in by the business community is the adulteration of food and drugs.[48] While the food adulterators exploit the miseries of our hungry, half-starved masses, the drug adulterators and manufacturers of spurious and sub-standard drugs make use of the ill-health and ignorance of the people to enrich themselves. The extent of adulteration of food-stuffs is said to be as high as 70 per cent in India. The desire for unlawful profits on the part of unscrupulous businessmen in India contribute in no small measure to the high mortality rate and wide-spread ill-health and mal-nutrition of our countrymen.

Violations like hoarding, profiteering, cornering, and blackmarketing of scarce and controlled commodities and trafficking in licences particularly in times of National Emergency and economic depression have been a common phenomenon among Indian traders.[49] The increasing number of prosecutions for these offences during the last five years of National Emergency vividly projects the criminal record of a section of our businessmen and their scant regard for national honour and social good. According to the Monopolies Inquiry Commission:[50]

> "There is hardly anybody in India who has not been a victim of the practice of hoarding, cornering and profiteering. Whenever there is a slight shortage - even temporarily - in any consumer goods for which the demand is urgent and inelastic, almost every trader - it is perhaps unnecessary to use the qualification 'almost' - conceals his stock and blindly tells the customers that he has not got the commodity in stock, often putting the blame on producers for keeping him in short supply. After some time when the customer can no longer do without

> the goods, he proceeds to dispose of his stock ('underground stock') at exorbitant prices to such customers who are prepared to pay the high price and - this is important - who would not insist upon a cash memo showing the price that is charged and is not likely to be difficult. Wheat, rice, sugar, edible oils, drugs, baby-food - each of these commodities and many others have had their share of hoarding and cornering practice. There is hardly anybody - except perhaps the traders themselves - who has not condemned these practices. They have been called wicked, anti-social, criminal, but still these make their appearance every time there is any apprehension of even a slight shortage of such commodities."

The Monopolies Commission also pointed out the fact that some big businessmen in India use their financial strength to corrupt public officials in the attempt to continue and increase their industrial domain. According to the Commission, such conduct of unscrupulous big business is partly the reason for the widespread corruption and dishonesty in the country.[51] It may be recalled here that the Santhanam Committee on Prevention of Corruption also held the view that the willingness and capacity to corrupt were found in a large measure in the industrial and commercial classes. The ranks of these classes have been swelled by the speculators and adventurers of the war period. To these corruption is not only an easy method to secure large unearned profits but also to feel important in society. The Committee felt that the tendency to subvert integrity in the public services was growing into a well-organised racket and if anti-corruption activities were to be successful, these unscrupulous agencies of corruption in the business world should be eliminated.[52] There is no doubt that unscrupulous section of Indian Big business has for too long, with its wealth and the brains in every field its wealth has enabled it to buy, made a mockery of decent conduct and equitable social behaviour.

Even the large body of modern social security and labour welfare legislations has so frequently been violated by industrialists and big employers that its objectives could not be realised to any satisfactory degree. The large number of repeated violations of labour laws vitally affecting the life and health of workers and the relatively minor penalties that courts impose on erring employers have often times led to public criticism. Such punishments have come to be regarded by industrialists as part of normal business not to be cared for.

Chit Fund Schemes: A Case Study in Business Criminality**

A recent study on the legal and monetary aspects of the 'Chit Funds Scheme' by the Research Division of the Central Bureau of Investigation,[53] is a fine illustration of a typical white collar crime practised under cover of an apparently innocent financial transaction.

The chit scheme in its simple form consists of a private agreement, usually verbal and among friends, relatives and neighbours, to contribute to the chit fund, at regular intervals, a certain number of equal instalments of money. The periodical collection of instalments is put to draw as in a lottery and the lucky member gets the 'chit prize'. His name is then eliminated from subsequent draws though he continues to pay subsequent instalments of subscriptions. His profit is

---

** Based on a C.B.I. study on Chit Funds (1967), Research Division, C.B.I. New Delhi.

that he gets far in advance the sum he is going to pay in instalments. The scheme is terminated with the last member getting his chit-prize. To him there is no advantage at all and he gets simply the return of his own money in full.

Variations of the above scheme, run on business lines and on ostensibly attractive terms, are responsible for most of the financial frauds and cheating in this area. Amongst them, the study under reference mentions two types, viz., the 'business-chit scheme' and the 'prize-chit scheme'.[54] Both these schemes envisage two parties as in a banking business, i.e., the management including the promoters, directors etc., and the subscribers. They do not require investment of large capital for starting it. The sponsors devise different varieties of schemes, publicise them and invite the public to join. Each scheme may differ in the number of members required, the amount and number of instalments, their periodicity and, the prize amount. The prize amount may either be cash or an article of utility. The member who gets the chit prize earlier gets greater advantages and benefits than the one who gets it later. The lucky member who gets the prize is relieved of the necessity to pay subsequent instalments. In certain 'business-chit schemes' the company after deducting its commission, puts the chit prize into auction amongst the members and he who is prepared to forego the maximum 'discount' gets the bid. He is given the balance of the chit-prize in cash after taking security for payment of subsequent instalments. The discount thus received from members is distributed equally as dividend amongst them.

Invariably in all chit schemes, the company earns large profits without large investments and without any risk of loss whatsoever. Besides the periodical commission secured by the company at every distribution of the chit prize, there are many other legal and illegal methods through which the management acquire profits. The legal methods include admission charges on entry of subscribers, penalty for late payment, forfeiture of dividend on delayed instalment, interest on loan, commission on discontinued chits and interests on deposits in banks pending payment of chit prize. The illegal methods adopted by these companies are legion and vary from wholesale criminal misappropriation of funds to 'disappearance' from the scene of business with a view to evade consequences for malpractices and re-emergence under different names to pursue the business again.

The C.B.I. study revealed the existence of fraud, misappropriation, cheating, forcing the company to liquidation to evade exposure, enrolment of bogus members, drawing of prizes in the names of bogus members, non-holding of the periodical auctions, delaying payments to prized members, finding fault with the securities furnished by them and mismanagement of the affairs amongst the chit schemes. The following devious methods to secure illegal gains were detected in the course of the study[55]:

> "1. If the requisite number of members for a chit series is not enlisted, bogus members are enrolled. It is also so manipulated that the auction ends in favour of bogus members or the lot is drawn in their names. In such a case profit or loss, on account of bogus members remains only on paper, while the bonafide members continue to pay the commission of the company without the profits expected through dividends.

2. The commission of the agents is dependent upon the number of members enlisted. Such agents are prone, with or without the connivance of the promoters, to misrepresent the rules and hold false promises. Unwilling members who join a scheme under pressure leave the series after some initial payments which then form clear profits of the company, because a heavy penalty entails abrupt discontinuance.

3. Normally the chit-prize ought to be delivered in cash to the successful member on the date of auction or draw. But the management usually adopts dilatory tactics for verification and acceptance of the security. The timelag between the collection of funds from members and the delivery of cash to the prized members is so extended as to merge in the next periodical collection. This leaves a continuous availability of cash balance to the extent of business acquired by a company. The study of the affairs of one company disclosed that the monthly collection of the company was about Rs.30,000/-. They were able to utilise this amount permanently in their private business without having to pay interest or to furnish security.

4. As the business grows, a regular office is established. Appointments to important posts such as cashier, accountant etc., are made on considerations of relationship without any security against defalcations.

The principal reason why there is unlimited scope for mischief by managements of the chit schemes is that the subscribers do not insist on sufficient security from the company before paying money and yet expect its return, whereas the management takes sufficient security when a prized amount is given to a member. In the result, the loss, when it accrues has to be borne entirely by the members leaving all the gains, lawful or unlawful, with the management. The assets in the form of ready cash in the hands of the promoters can be concealed and even if the members file a civil suit against the company and secure a decree, the chances of recovery are extremely rare. As a consequence, when a chit company fails, the number of members who suffer loss is very large and panic is widespread."

Even the advertisements, pamphlets and posters relating to chit funds put up by the promoters exaggerate, misrepresent and even lie on the seemingly attractive features and special benefits of their schemes with the result the

public, usually of the middle and lower-middle classes, venture into the schemes without much thought.[56] Many of these schemes fail ultimately and the majority of members suffer heavy losses while the promoters enjoy their ill-gotten profits.

According to the C.B.I. study, 263 chit fund companies existed in Delhi, 185 in Madras, 23 in U.P. and 6 in Bombay City.[57] Except for the Madras Chit Fund Act of 1961 which is in force in the State of Madras and the Union territory of Delhi, and the Travancore Chitties Act of 1945 operative in parts of Kerela, there is no other law elsewhere in the country regulating chit business.[58] The following findings of the study under reference indicate the modus operandi of promoters of these companies in reaping illegal profits and evading legal consequences.[59]

> "The present attitude of the police towards the chit fund companies is one of non-interference. It is conditioned by the fact that the transactions involved in the scheme are of a civil nature. The chit rules are so framed as to convert the chit agreement into a money-transaction - a pure and simple civil contract - between private parties, fully reduced into writing and leaving no scope for criminal prosecution. The promoters of chit companies take considerable pains to ensure that this appearance is maintained. The rules and regulations framed and the terms and conditions incorporated in the documents executed thereunder, leave no scope for interpreting the transaction, otherwise than as a civil contract. Most of the rules also specifically provide jurisdiction to the civil court in the event of a dispute or breach of terms. In the circumstances the police when approached by members with complaints against chit companies which fail to honour their commitments advise them to approach the civil courts for redress. A recourse to civil action involves considerable time and expenditure, with no assurance as to the time and nature of its final outcome.

> Most of the aggrieved persons, therefore, regard the loss as inevitable and suffer in silence. Even if one is inclined to go through the tedious and complex processes of civil litigation, the promoters of the defunct chit company, virtually vanish into thin air and it is difficult for a common man to trace them and compel their attendance in civil courts. Even when success is achieved in procuring such attendance at the court and a favourable decree, the plaintiff may still find the decree only a 'paper decree'. The defendants leave no assets from which the dues can be realised."

The chit scheme thus provide a cover for a variety of white collar crimes. Some of the schemes (e.g. Prize-chit Scheme) are themselves criminal insofar as they amount to lottery prohibited under section 294-A of the Indian Penal Code,[60] while others abound in illegal activities of the nature of white collar crimes. The C.B.I study lists the following features as characteristic of violations in the area of 'Business-Chit-Scheme' which makes it a typical case of white collar criminality. They are:[61]

> "1. The financial loss to the society, caused by the irregularities or fraud practised by some proprietors of a business-chit company, is far more wide-spread than in respect of ordinary crime. The sudden disappearance of the promoters of a chit company with all assets involves pecuniary loss to hundreds of subscribers.
>
> 2. The sponsors of the business-chit companies usually belong to the upper or middle socio-economic strata of the society. They can take full advantage of their position and standing in society to evade legal action.
>
> 3. The stigma of criminality is not attached to the irregular activities of the promoters of business-chit companies. The unethical practices adopted by them pass off as "minor infringements", "misdemeanours", "civil breaches of contracts" in which the State or Society as such, it is argued, is not concerned.
>
> 4. Business-chit shcemes resort to impressive publicity based sometimes on misrepresentation.

5. The resentment of the public towards the failure or malpractices of business-chit companies is relatively unorganized as the public is unaware of the intricacies of the law and the devious channels through which the promoters secure profits. The malpractices resorted to by the promoters and directors are not obvious. The effect of their criminal activity on its victims is diffused in space and time. Consequently, the initiative to take action against the perpetrators of the wrong is rapidly dissipated.

6. Violations of law in connection with the promotion and running of chit funds have country-wide ramifications. The behaviour of the promoters is recidivist or persistent. In spite of the failure or closure of chit fund companies, the sponsors reappear under different names and guises.

7. A significant difference between ordinary crime and white collar crime is that, in the former the criminal tries to conceal his identity but the crime aspect or its effect is obvious; while, in the latter, it is the reverse i.e., the criminal does not try to conceal his identity, but the crime aspect or its effect is rarely conspicuous. In the business-chit fund transactions the secrecy of crime is facilitated by the dubious practices of the organizers, while their effects are diffused over a long period and the victims are spread over a large area.

8. The organizers of chit-fund companies rationalize their activities. With the object of maintaining their status as law-abiding citizens, they employ experts in law and public relations and depend upon extensive publicity to support them."

Advertising and Business Criminality:

In the modern technological society, advertising is no longer a fringe phenomenon; in fact it is beginning to take on an institutional role, and is beginning to figure alongside the church and school as a major social force.[62] It is not often, however, that advertising is examined, analysed and assessed as an institution. It confers certain benefits, but its excesses are dangerous to social health.

There has not been any attempt so far in this country to determine the extent of harm caused to the public as a result of misrepresentation and exaggeration in advertising. The criminal law of fraud developed before the rise of modern advertising. When advertising developed, the criminal law of fraud proved to be inadequate to protect society against the manifold manipulations of 'admen'. Many of the methods of advertising adopted by commercial and business interests to exploit the psychological weaknesses of the people and cash in their susceptibilities are virtually criminal though its diffused effect in society and the exceedingly impersonal transactions of modern business dynamics may make proof of criminal intent practically impossible. Advertising in the hands of unscrupulous business interests has gained for itself a reputation for vulgarity, untruthfulness and downright dishonesty. Today, advertising is well known to be the mainstay of sales of spurious and dangerous drugs and adulterated and substitute foods. Under cover of the feeble and ineffective provisions of the anti-adulteration laws, the business interests are systematically bombarding us with falsehoods about the purity, healthfulness and safety of their products, while they have been making enormous profits by experimenting on the people with poisons, irritants, harmful chemical preservatives, and dangerous drugs. The advertisements, by their sheer volume, frequency, cleverly-worded assurances and testimonials and the good repute of the medium in which it appear, capitalise on the credulity of the gullible public. Several million rupees are spent annually in advertising[63] and in

several cases in excess of the ceiling limit of four per cent of turn over.[64] Clearly this extravagance in advertising on the part of big business is not only to avoid taxation but also to exploit human weaknesses for the purpose of illegal profits.

Advertising is a perfectly legitimate and necessary business practice. Besides newspaper advertisement which is the most common, it may take the form of bill posting, electric and neon signs, advertising in passenger transports, cinema houses and other places where public frequently visit, radio and television advertisements, hoardings in street corners etc., etc. All these forms of advertisements do confer certain desirable social benefits. For example, it brings knowledge and information regarding the availability and usefulness of goods advertised and may, in certain cases, reduce the prices of goods and improve their quality by increasing their sale. But the danger lies in the possible abuse of the medium and the consequent damage to consumer interests and social good. Unfortunately the great bulk of modern commercial advertising is much more than merely informative. A good deal is positively misleading and false. They are beyond the reach of the available legislation[65] and inadequately restrained by the voluntary systems of control which now exist.

In broad terms, the impression seems to be that a good deal of advertising has abandoned any serious attempt to portray the product to which it relates. Instead, it is felt, it aims at coupling a brand-name with a much-lauded (but not

necessarily significant or accurately described) characteristic or with pleasant but irrelevant associations. It then hammers home its "message" with relentless vigour and skillful technique until the consumer is so bemused that he can no longer make a considered choice with regard for his true needs, but buys rather on the strength of an instinctive, almost hypnotised, reaction to the brand name.[66] In short, most of the persuasive advertisements create confusion and innumerable desires in the public mind which business enterprise can translate into money. They reduce the consumers' ability to choose rationally and lead them to buy ill-advisedly.

Another form of advertising attempts to exploit common and easily-aroused emotions and basic human motivations. They play upon fear - fear of illness, fear of unpopularity, and the like. Some advertisements present their goods in association with some scene of romantic or domestic bliss. The assumption of the advertiser is supposed to be that the reader or viewer would earn for the mutual happiness displayed by the couple in the advertisement, and would seek to introduce it into his or her personal life with the aid of the clothes, or the cigarettes, or the chocolate or the cosmetic which appeared to contribute to the blissful occasion.[67] It is interesting to note in this connection the following passage on the foundation of modern advertising psychology:[68]

> "People very often do not know what they want, that when they do know they often lie, and that many of their motives in buying a particular product are unconsciously motivated. To discover by new techniques what these unconscious motives are, became the basis of a new applied science described as Motivational Research, which is now in use by

> many leading advertisers. This procedure assumes (a) that by new methods one can discover what a person 'really' wants, his real motivations and (b) that, on the basis of this knowledge, it is possible to manipulate him even without his being aware of the fact ..... There is a great gap between what people believe themselves to think and the unconscious desire or fear that in the last resort motivates their actions. Thus common sense might lead one to suppose that most of us brush our teeth for reasons of dental hygiene, to prevent decay or to make our teeth look clean and these were therefore the motives upon which tooth paste manufacturers hammered for years in their advertisements. But investigation has shown that most people brush their teeth once a day and the time they choose is the least logical - immediately on rising, because what they basically seek is to start the day with a fresh mouth. Many are worried about the social effects of bad breath than about the fate of their teeth....."

The advertisers seem to start from the premise that man is not fundamentally rational and go on creating 'psychological obsolescence' whereby people become dissatisfied with a perfectly efficient old model. It is obviously difficult to appeal to common sense by truthful advertising which relies on giving factual data if the brands from which the customer is expected to choose are alike in all essential ingredients and qualities. The advertisers, therefore, attribute virtues or particular characteristics in a manner which, while likely to make a perceptible impression upon the consumer, is so vague that the claim cannot be disproved. Such meaningless claims may take many forms.[69] For instance, there may be a statement that the advertised article is of comparative merit that it washes whiter, or lasts longer, or is easier to use - but does not indicate the yardstick by which the superior merit is measured. Or again the presence of some special constituent may be loudly proclaimed, with such insistence and pseudo-technical support that the consumer may suppose

it to confer real advantages only to be found in the particular brand, whereas in fact it is of negligible advantage, or is present in competing brands in virtually identical form and proportions but under a different trade name.

A random sampling of the commercial advertisements in four English daily newspapers published from Delhi indicated the following broad features.[70] The advertisements mainly related to health foods, patent medicines, cigarettes, household goods, cosmetics, toilet goods, textile and woollen goods, ready-made garments, electrical appliances and industrial machines and tools. Majority of the advertisements on textiles, cosmetics, toilet goods and health food played upon questionable emotional appeals which were either direct or indirect. In the former case, the aim appeared to be awakening a desire - pleasant or unpleasant - which the advertised product claimed to satisfy. The appeal in some cases was to fear - fear of ill-health or social condemnation - while in others it was to the desire to be physically attractive, to be appreciated by others or to have a secure, comfortable domestic life. The indirect emotional appeal was exploited by displaying attractive scenes, persons, or situations in the advertisement; the product was associated with these, but presented as an incidental contribution to their attractive nature. Some of the advertisements on patent medicines, tonics and cosmetics claimed with practically no qualifications that they would restore vigour, aid digestion, heal wounds and burns, stop pains, prevent tooth decay, stop deteriorating health, eliminate body odour, cure facial

blemishes, stop falling hair, prevent common colds, eliminate pimples, cure any type of piles etc., etc. Basic human motivations like greed, fear, emulation, hypochondria and popularity were appealed to in a variety of methods. It is apparent that most of them exaggerate the values of their products and misrepresent through vague and ambiguous claims. However, they seem to succeed in their main purpose of elimination of objective consideration of quality and utility in favour of passive acceptance and emulation. The public overlook the subtle, calculated deception that this type of modern salesmanship entails.

It is not intended to suggest here that all modern advertising practices are criminal or deserve to be legally prohibited. At the same time the need for legal restraints against its abuse is only obvious. For instance, persuasive advertisements put out indiscriminately by manufacturers of patent medicines and drugs are mainly responsible for self-medication leading to dangerous consequences.[71] For the callous disregard for human life in the competition for more and more profits, the makers of some patent medicines, drugs and pharmaceuticals would be classed by a more discerning society with the worst type of criminals. Commercial advertising as we know it today has indeed become a fertile source of 'criminal' exploitation by the business interests.

Moreover, advertisements which trade on human weaknesses could well in the long run have a deplorable individual and social effect. It is said that over the years advertising has led to a steady decline in popular taste by making people willing to accept the second or third rate

goods and services. According to one writer[72]:

> "It stereotypes the capacity for emotional response in a way which lowers the level upon which we live and is therefore in a profound sense dehumanising. As a result of linking of the product with ideas and images which are in themselves innocuous and pleasurable, concepts like sexual love, manliness, feminity and maternal feeling get gradually devalued by their mercenary association with a brand name - as though the real human values they represent can be purchased by rushing out and buying something. It is also highly probable that the language itself will become desensitized as a result of the constant association with superlatives. Such false superlatives used in most consumer goods advertisements debases and defiles the language and breeds disrespect for truth ..... Advertising works by association, suggestion and stimulation; it flatters, it deceives, it plays on emotions and deep-seated feelings, it promises and consoles by formula. Can one deny that it contributes to the shaping of standards, values and behaviour patterns? This powerful influential institution is being used to the exploitation of materialistic drives and emulative anxieties and then to the validation, the sanctioning, and standardization of these drives and anxieties as acceptable criteria for social value."

Factors Encouraging Business Criminality:

As in other crimes, the causes of business crimes too are numerous and variable. No set of factors, nor any given situation, will always result in crime. It will be unprofitable to attempt to find common factors relating to the actual origins, methods, motives and end-results of business crimes. The circumstances that provide opportunities for business criminal behaviour may perhaps be found in a large measure in the socio-economic conditions obtaining in India today. Public life in general is greatly demoralized and ethical values are at a low ebb. Traditional moral values

and institutions of social control of individual human behaviour are fast disintegrating without effective substitutes in their places. In a competitive society where material possessions and wealth, howsoever ill-gotten, are considered the criteria for social status and recognition, it is but natural to expect the business world to brush aside restrictions that come in their way of pursuit of wealth. A society that does not attach any stigma to the corrupt and dishonest men can hardly be rid of such ignoble men.

An essential characteristic of business is that it is a social activity and crimes can exist in this sphere only when there is in society a section of people capable and willing to abet in their commission. As it is often said, there can be no sellers without buyers. Public, desirous of getting goods and services which they cannot get legally, enter into underhand dealings with dishonest businessmen to satisfy their unlawful needs. The result of such public complicity is not only to encourage business criminality but also to make criminal behaviour acceptable to society. Herein, undoubtedly, lies the unique character and potential danger of business crime.

Are these businessmen anti-social or criminal by instinct? As a general statement this will not be correct. Some of them may be anti-social in nature with criminal instincts. The personality and experiences of violators may be an important factor and may even be decisive in certain cases. But most of them do not seem to be intrinsically wicked,

however much one may deplore the evil effects of their frauds and malpractices in business. Outside their occupation, they may be good citizens leading a socially acceptable and even pious life. Many of them are God-fearing, spiritual, and would contribute a good chunk of their earnings to please the Gods and impress upon society of their good intentions. In certain cases their offences may be found to be technical and not intentionally fraudulent. Thus, in the case of many prosecutions against comparatively small-sized companies, the Company Law Administration observed that the violations were due to lack of even minimum staff who could ensure compliance with the provisions of law, especially when the managing directors were either too pre-occupied, or themselves ignorant of and indifferent to the relevant provisions of the law.[73]

Though, in business crimes, culpability may vary in degrees, the besetting vice in a large number of cases is greed. An inordinate desire for luxurious consumption and social recognition drives him mad after profits. As one writer has put it, "Products of an acquisitive society they typified in extreme degree, it's madness."

It must also be admitted that the general financial and business climate at any given period is largely responsible for the number of crimes during that period. In the post-war period there was all-round depression and scarcity conditions which put the economy almost out of gear. Industrialists and businessmen had abundant opportunities to make easy money without fear of being prosecuted and penalised. Along with it,

the lax provisions of the Indian Companies Act, 1913 relating to audit and information required in prospectuses encouraged the promoters of bogus companies and manipulators of deceptive balance-sheets to fully exploit the situation for their unlawful ends. The administration of the law was anything but effective and financial empire building, no matter how flimsy or fraudulent the foundations, could be sustained by fresh floatations, new money raised from the public to make good past losses or defalcations.[74] Later, as successive statutes sought to ensure greater protection for the investor, the development of the holding company system, the managing agency system and the interlocking of investments between units in a centrally-controlled group further provided opportunities to evade the law and manipulate accounts for purposes which could easily be illegitimate. The growing remoteness of the shareholders from his property - a salient feature of modern business organisation - led inevitably to the managerial entrepreneurs arrogating to themselves the right to dictate the uses to which the funds within their power could be put. So long as things went well and dividends could be declared, few share-holders ever displayed much curiosity as to the disposal of their money. Thus, the contemporary pattern of business organisation and finance characterised by the remote share-holders, absentee ownership, impersonal monopoly, interlocking of investments, bank ownership being intertwined with big business, the enormous amount of black money in business hands, concentration of economic power, and the control of the press by industrialists etc., substantially helped our financial

empire-builders to violate the law and get away with it.

In view of the strong monopolistic trends in the private corporate sector and in view of the concentration of wealth and means of production in an increasingly few hands, it is desirable and advantageous to examine in this context the extent of such concentration and its potential harm.

The potential dangers of excessive concentration of economic power are indeed disastrous to the concept of a Welfare State. Conscious of this danger the fathers of the Constitution have emphasized the need for fighting this danger and provided in Article 39(b) and (c) that:

> "The State shall in particular direct its policy towards securing (i) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and (ii) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."

The legislative policies of the Centre and the States have been conditioned to a large extent by this directive principle in the Constitution and the Statute book abundantly reflects this trend in legislation. But, either due to inadequate enforcement of controls or due to some other reasons the economic development of the country has been characterized by increasing concentration of wealth and wide disparities in economic levels of living. The extent and effect of concentration of economic power and the prevalence of monopolistic and restrictive practices in important sectors of economic activity were recently brought to light by two

Commissions set up by the Government of India - the Monopolies Inquiry Commission[75] and the Committee on Distribution of Income and Levels of Living, commonly known as the Mahalanobis Committee.[76] According to the Mahalanobis Committee there is concentration of economic power in the country in terms of income, property and more especially in terms of operational control over the non-governmental corporate sector. There is a growing concentration in ownership of companies which constitute economically the most significant form of property. A study of joint stock companies in India showed that while the number of companies is large, a small number of companies accounted for a large portion of their paid up capital. Thus, in 1960-61 the total number of companies having a paid up capital of less than Rs.5 lakhs each constituted 86 per cent of the total number of companies at work during that year, but their share of the total paid up capital of Rs.50 lakhs and above constituted only 1.6 per cent of the total number of companies but claimed 53 per cent of the total paid up capital.[77]

The Monopolies Inquiry Commission also found an increasing trend towards a high degree of concentration of economic power in India and pointed out the widespread prevalence of its evil consequences. On a detailed study of product-wise concentration, the Commission found a high degree of concentration in the production of products such as baby food, tea, sugar, various types of textile fabrics, cigarettes, various kinds of medicines, transport goods and building materials.

The Commission also made an extensive study of what is called countrywise concentration by analysing the data regarding 2,259 companies which appeared to belong to one or the other of the 83 big business groups in the country.[78] In terms of total assets owned, the Tata group, with 53 companies possessing total assets of Rs.417 crores topped the list with Birlas - 151 companies with total assets of Rs.292 crores - following second. It was found that about 75 leading business groups or houses control 44 per cent of the total paid-up capital in the corporate sector. In spite of the known fact that big industrialists control the leading banks in the country like the United Commercial Bank and the Punjab National Bank, for want of sufficient evidence, the Commission could not include those banking industries in their study of the leading business groups to which those banks belong.

In the Indian context, it is the concentration of control in the industrial sector as a whole rather than in any one or other particular industry that presents the more menacing aspect of concentration of economic power. The Mahalanobis Committee found that shares in joint stock companies are held by an extremely small percentage of the population and that this itself is significant enough to command attention. But more important than ownership is operational control. The normal behaviour of the large majority of share-holders whose individual holdings are quite small, does not indicate on their part any real interest in exercising the control that goes with ownership; and the growing importance of impersonal holders like banks, trusts,

companies and the like has increasingly tended to divorce individual ownership from control. Control, being real economic power in modern business dynamics, big business enjoying the privilege gets enough opportunities to determine the way it will make use of such power. The report of the Commission of Inquiry on the Administration of the Dalmia-Jain Group of companies throws much light on the anti-social consequences that would follow from such concentration of economic power in the hands of unscrupulous big business.

It is interesting to note how by a process of inter-corporate investment, control is acquired by one "controlling interest" over a number of companies with comparatively little investment. The controlling interest's investments are generally financed mainly by borrowing from banks on the security of the initial investment itself and here multiple directorships between banks and industries play a vital role. The control acquired by inter-corporate investment is supplemented by powers obtained under managing agency agreements and by the buying and selling of shares by investment companies belonging to the group. It is not thus necessary for the controlling interest, for the purpose of acquiring control, to own the majority of shares in every company in the group. It was estimated[79] that out of over 28,000 private sector companies which controlled capital of Rs.1,060 crores, just 185 companies controlled capital of Rs.355 crores, that is, about 33.5 per cent. In other words, about 4 per cent of all the private sector companies in the country controlled 33 per cent of the capital resources.

The Mahalanobis Committee also found on the basis of Dr. R.K. Hazare's study[80] that inter-corporate investment is the main instrument, and an increasingly important one, for the control of companies in the private corporate sector.[81] Dr. Hazare has attempted to identify groups in the corporate sector which exercise effective control over corporate decisions, even though they may have no separate legally-identifiable existence. A corporate group of this kind or a controlling interest is defined as consisting of units which are subject to the decision-making power of a common authority. It takes policy decision on prices, profits, investments, production, purchases and sales on behalf of a number of companies and determines responses to particular economic and political developments. It functions as a single organization, though each of the companies it controls is a separate legal entity apparently independent of the others with which it is linked by this Controlling Interest.

Twenty leading groups have been studied by Dr. Hazare on the basis of various criteria to yield a cross-section of the corporate private sector. These twenty groups have increased their share of all corporate private capital including both public and private companies, from 29.2 per cent to 32.4 per cent, during the eight years ending with 1958. The share capital of the companies controlled by the twenty groups in 1958 stood at Rs.352 crores, net physical assets at Rs.501 crores, net capital stock at Rs.814 crores, and gross capital stock at Rs.1102 crores. Their share of net physical assets was 37 per cent. The figures reveal, according

to Mahalanobis Report, an impressive picture of concentration of economic power in the entire corporate private sector. The Report further observed[82]: "The picture of economic concentration gains added significance when one makes a further break of ten of the largest groups. These ten groups had an interest of one kind or other in 876 companies with a share capital of Rs.205 crores in 1951 and 929 companies with a share capital of 297 crores in 1958. They accounted for more than 25 per cent and 27 per cent of the share capital of non-government companies in 1951 and 1958 respectively. Among these ten groups, the top four showed a still higher degree of concentration, the companies controlled by these complexes accounting for a share capital of Rs.147 crores in 1951 and Rs.225 crores in 1958 or 18.2 per cent and 20.8 per cent respectively, of the share capital of entire corporate private sector. The top-most group controlled a share capital of Rs.66.8 crores in 1951 and Rs.108.2 crores in 1958 or 8.3 per cent and 10 per cent respectively of the share capital of the entire corporate private sector." The Report further stated that the data made it quite clear that "concentration of economic power exists to a significant extent in the public non-government corporate sector and also that it has increased significantly between 1951 and 1958."

On the technique of inter-corporate investment for the control of companies, Dr. Hazare observed[83]:

> "The controlling families in most cases made some relatively small investments in a principal company or companies which initiate a breeding process - in some groups an in-breeding process - that takes care of nearly all subsequent

> controlling investments of significance, without calling forth further substantial investments from the families. All complexes except Martin Burn, Shri Ram, Kasturbhai, Seshasayee and Kirloskar, have a large number of subsidiaries and joint-subsidiaries, Birla had 105, Dalmia-Sahu-Jain 50, Bird Heilger 44, Andrew Yule 20, Bangur 47, Thapar 31, J.K. 27, Shapoorji 15, Khetan 14, Walchand 16, and Mafatlal 13 ..... In most of the remaining companies, also, inter-corporate investment played a key role but individual trusts too were important holders."

Thus concentration of economic power became possible in the new set up because ownership and investment of personal funds is not required for acquiring operational control over large segments of the non-governmental corporate sector. We have seen above how by inter-corporate investment which, in many cases, led to the creation of holding-subsidiary relationship among companies led to the concentration of economic power in the hands of certain groups or complexes. But control need not be exercised only through the Controlling Interest's relative share in the assets of the companies either through ownership or inter-corporate investment. It can also be exercised through managing agents, common directors and similar other forms which enable the controlling group or authority to participate actively in the day to day business of such undertakings.

Quoting from a study of managing agents by the Reserve Bank of India, the Mahalanobis Report observed[84] that in a sample of 1001 public limited companies there was a decline in the number of managing agents from 407 in 1955 to 355 in 1959, with the number of companies they managed falling from 715 to 597. Their control declined from 73.3 per cent

to 65.7 per cent in terms of net worth and from 72.3 per cent to 66 per cent in terms of total assets ..... Of the ten most important managing agents studied in the paper, Tata Industries (P) Ltd., Martin Burn Ltd., and Birla Brothers (P) Ltd., were the first three leading managing agents measured both in terms of net worth and total assets. These three managing agents managed 25 companies in 1959 which accounted for 20 per cent in terms of total assets of 1001 companies, while in 1955, these three units controlled 31 companies which accounted for nearly 16 per cent of the total assets of 1001 companies. Although the number of companies managed by these three groups has decreased, the control both in terms of net worth and total assets has increased. Thus, while the reform of company law has reduced the role of the managing agent in corporate affairs, within the reduced number of managing agents, the tendency is clearly visible of a strengthening of the influence of the bigger managing agents and consequently of concentration of economic power through the exercise of managing agency functions.[85]

Besides Managing Agencies, common directors or interlocking of directorships constitute another method for bringing about concentration of economic power. On a study made by the Company Law Administration[86] for 1956-57 of directorships in 331 companies with paid-up capital of Rs.50 lakhs each, it was found that 1,502 persons held a total of 9,419 directorships in these companies besides 7,366 directorships in other companies. The average number of directorships held by a person thus came to 6.5. Of the 1,502 persons, 26.6 per cent held single directorships,

53.2 per cent held two to ten directorships, 14.4 per cent eleven to twenty directorships and 5.8 per cent more than 20 directorships. In other words, 73.4 per cent of the persons acting as directors held multiple directorships and the total number of the directorships held by the directors holding single directorships accounted for about 4 per cent of the total of 9,785 directorships held by the 1,502 persons.

These directors holding multiple directorships even if their holdings in share capital of the companies they manage are low, directly or indirectly control a fairly high proportion of the capital of the companies through their benamidar relatives, friends, financial institutions and companies. Further, due to dispersal of share holdings over a large number of persons, a majority of whom do not take active interest in corporate decisions, it is not necessary to have a majority of voting rights to get or retain control of a company, even a block of 10 to 20 per cent of the voting rights being enough sometimes to acquire control. In addition, substantial holdings of share capital by disinterested financial institutions also encourage such control. Thus, without even a significant share of ownership, inter-locking of directors may lead to operational control of a number of big-sized industrial undertakings by one industrial house.[87]

The phenomenon of multiple directorships is more marked among bank directors and the inter-locking of directorships between banks and non-governmental industrial undertakings is an additional factor facilitating concentration of economic power.

Almost every big industrial house in the country controls one or more leading banks. The influential industrialist-directors of banks not only take advances freely on liberal terms from the banks which they control, but also take advantage of their status to borrow from other banks for building up industrial empires by way of mutual accommodation of one anothers' companies. These bank advances might help unscrupulous big business to hoard goods, create artificial scarcity in the market and maintain high prices.

A study of interlocking between directors and managing directors of fourteen selected leading banks and 296 large-sized non-government public companies with a paid-up capital of Rs.50 lakhs or more revealed that out of 148 directors of the fourteen banks, 24 were directors of one industrial house each, 37 were directors of 2 to 4 undertakings each and 14 were directors of more than 6 industrial houses each.[88] The dominance of industrial directors on the boards of commercial banks is seen to be much greater in the case of the first eight banks - Bank of India, Central Bank of India, Punjab National Bank, United Commercial Bank, Bank of Baroda, Allahabad Bank, Indian Overseas Bank and United Bank of India - in whose case they numbered 59 out of 77 or nearly 77 per cent of the total. It is evident from the above that there is a significant link in the form of common directors between the leading banks and the large-sized industrial undertakings.[89]

Bank advances to concerns in which the directors of the banks concerned are interested, accounted for Rs.184 crores in 1962. This constituted 12.4 per cent of the

advances given by all scheduled banks. The growth of big business and concentration of economic power in the hands of a few industrial houses is undoubtedly due in large measure to this intertwining of banks and industrial houses through common directors. In the present system of banking and finance the small industrialists get only a very small share of bank loans. The huge resources in the control of a few industrial houses and large complexes enable them to jump into any business, take incalculable risks to drive out small, struggling entrepreneurs and to capture the market. The Mahalanobis Committee observed[90] that "in view of the prevalence of mutual understanding among the big industrial complexes, banks might give assistance not only to industrial concerns in which their own directors have a major interest, but also to other industrial houses which might in turn reciprocate through the banks on which they have strong representation."[91]

Monopolistic growth in India, following the traditional pattern, took control first of industries and business and then banking and mass media of communication. The link between industry and newspapers is more striking in India than in any other country in the world. Newspapers are controlled to a substantial extent by selected industrial houses directly through ownership as well as indirectly through membership of their boards of directors. In addition there is the indirect control exercised through expenditure on advertisements. In short there is an obvious fusion of Indian monopoly capital and the Indian Press. According to

one study,[92] only fifteen owners, mostly big business interests, control over 50 per cent of the circulation of daily newspapers in India. This small group of business magnates is in a monopolistic position in regard to newsprint, advertisements, financial resources, banking facilities and relations with the Government in their representative capacity. This situation has dangerous potentialities not only to the freedom of the press but to democracy and socialism as well. This is clear if only we remember that without the readers' knowledge, the paper and, in a sense the readers with it, change governments and influence their policies and actions.

Inevitably, because of the control of the news media by those who are monopolists in the field of industry and banking, the media is abused very often with a view to protect monopolists' interests. Socialist policies and planning face opposition from the newspaper chains and groups that are mostly controlled by the same interests who own or control the leading industries and banks in the country. An objective assessment would indicate that since Independence, the Press, under the direct control of big business, has become a kind of power lever which is used every now and then to wrest business concessions from the Government. Further, the industrialist-owners of Indian Newspapers, having an excessive interest in the nation's textile, jute, cement, sugar and banking industries and usually propelled by the insatiable urge for profits and yet greater profits, take news media as a business run in line with textile or jute conducted for the primary objective of profit. As a result,

the public agencies of communication do not express adequately the organized moral and social sentiments and responses of the community. Since white collar crimes are largely violations of law by big business-men they are seldom reported in our newspapers that are owned by those very businessmen.

The high degree of concentration in newspaper industry is evident from an analysis of the ownership of newspapers in relation to their circulation. According to figures available from the Annual Report of the Registrar of Newspapers in India[93], for the year 1960, as much as 67.5 per cent of the total circulation of dailies in India came under the ownership of Chains, Groups and Multiple Units.[94] Out of a total circulation of 46.10 lakhs of dailies in different languages in the country, the share of those forming part of 17 Chains, 115 Groups and 27 Multiple Units was 31.10 lakhs. There were ten owners representing five Chains (Express Newspapers, Times of India Publications, Hindustan Times and Allied Publications, Amrita Bazar Patrika and Jugantar and Ananda Bazar Patrika) three groups (Malayala Manorama, Free Press Journal and Hindu) and two Multiple Units (Thanthi and Statesman) which published 37 dailies with a circulation of 18.11 lakhs and thus controlled 39.3 per cent of the total circulation of daily newspapers in the country.

Among the other factors that facilitated the growth of big business in India and accelerated the process of economic concentration, mention may be made of the working of the planned economy and development. It is curious for an ordinary observer to find that even after a decade

and more of planned development and despite fairly heavy schemes of taxation on the upper incomes, there is considerable amount of concentration of wealth in the country. The system of industrial licensing, control of capital issues, regulation of imports and financial assistance by governmental agencies during the plan period tended to produce formidable difficulties to the small industrialist and put big business in an advantageous position. Big companies were assisted with finance rendered by public institutions like the Industrial Finance Corporation, the National Industrial Development Corporation and the like. In this context, it is distressing to note the findings of the Company Law Administration[95] to the effect that while companies with large reserves have invested heavy amounts in shares of other companies in the same groups, they borrowed heavily from the Government and quasi-Government institutions. Big companies were assisted by Government in other ways too. In addition to affording a protected market and the necessary overhead facilities, and maintaining a budget policy with a mildly inflationary situation favourable to industry, the Government have been promoting the growth of private industry by extensive tax incentives and tax holidays.[96] The Life Insurance Corporation which is a nationalised concern, also supports big business in private industry by its holdings of stock exchange securities, its total investments in this sector amounting to Rs.92 crores as on 31 December, 1960.[97] The Mundhra episode[98] is an

astonishing revelation of how public money held in trust by the L.I.C. is wasted on a stupendous scale to help unscrupulous big business.

It may be seen from the above that the operation of the economic system with its criteria of credit-worthiness and security for lending and investment, tended to support big business against the small and struggling entrepreneur. "Concentration of economic power in the private sector is more than what could be justified as necessary on functional grounds", observed the Mahalanobis Committee. The Constitutional directive of dispersal of economic power and promotion of socio-economic justice remains a dream in the face of the increasing economic power and monopoly in the hands of a few industrial houses and groups. It is paradoxical that in India, a professedly socialist country, there is no law against monopolies similar to the anti-trust legislation in countries of the West.[99]

What are the anti-social effects that follow economic concentration and monopoly situation in big business? The Monopolies Inquiry Commission has pointed out some of these unhealthy and anti-social trends in Indian big business and recommended the setting up of a permanent statutory body for the control and prevention of the evils of restrictive and monopolistic practices. The Commission had made a distinction between "monopolistic practices" and "restrictive practices". The former includes every practice by persons enjoying monopoly power to reap the benefits of that power and every action, understanding, or agreement tending to or

calculated to preserve, increase or consolidate such power. While such monopolistic practice would also be a restrictive practice in the strict sense of the term, the Commission confined the words "restrictive practice" to mean practices other than those pursued by monopolists which obstruct the free play of competitive forces or impede the free flow of capital or resources into the stream of production or of the finished goods in the stream of distribution at any point before they reach the hands of the ultimate consumer.[100]

It is common knowledge that big business does not like competition and it makes careful arrangements to reduce it and even eliminate it. For competition these businessmen have substituted "private collectivism". They meet together and determine what the prices shall be and how much shall be produced, and also regulate other aspects of the economic process to subserve their partisan interests. In fact, the interests of businessmen have considerably changed from efficiency in production to efficiency in manipulation for the attainment of preferential advantages from the Government and overcoming legal barriers. They hold the view that "the business of business is gain and the making of profits, that it has nothing to do with standards, and that each businessman is free to gather his profits in any manner and by using any method he considers suitable." They refuse by their thoughts and actions to adjust the private ends of business with the legitimate purposes of society.

In the words of the Monopolies Commission,[101]

> "Big business, by its very bigness sometimes succeeds in keeping out competitors. It can do so by reason of its financial strength, it can afford to sell for sometime at an unremunerative price with the definite object of eliminating existing competition or discouraging potential competition and because of its fighting strength by large scale efficient advertising ..... That the big industrialists in this country have exploited the strength of the weapon of advertising is clear from the fact that some of them have their own newspapers or chain of newspapers. Birlas have their 'Hindustan Times' and along with it a financial paper 'The Eastern Economist' the Sahu-Jain Group, 'The Times of India' and the 'Economic Times', the 'Statesman' is now owned by a combination of industrial interests. But even apart from the ownership and control of newspapers, some business houses in India spend considerable amounts in lavish advertisements which is at once the envy and despair of smaller people. Further these newspapers and financial journals do tend to prejudice the reader in favour of business men in general, and big business in particular ..... It tends to obstruct the free formation of public opinion by presenting too rosy a picture of the performances and practices of big business in general by slurring over many of their malpractices."[102]

The practice of shutting out competitors, according to the Monopolies Inquiry Commission, is the most reprehensible of all monopolistic practices. Several instances of such attempts, where the Commission found a prima facie case, are recorded in its report.[103] Thus, Kores Co., a Birla concern having a practical monopoly in the production of stencils in India, was alleged to have influenced the Government authorities for denying a licence for production of stencils to Bharat Carbon in 1964. The Glaxo Co. was reported to have threatened the Kaira Co-Operative Society (manufacturers of the well-known Amul Products) that "they would buy up all the goods manufactured by the society and throw them into the sea" if they start manufacturing baby food.[104] A more detailed

account of the judicious use of threats and the use of price cutting against a competing producer is found in the 'price war' that continued for some time between Dunlop Co. and Madras Rubber Factory. Similar attempts by monopolists or near monopolists to keep out or crush competitors in various ways are by no means rare and these monopolists, the Commission found, acted as "price leaders" charging exorbitant price. "What directly affects the general public even more than this shutting out of competitors is the actual charging of unfair price which is the monopolists' aim in all such actions", observed the Commission.[105] The Commission compared the cost of production as supplied by some industrialist with the prices the consumer had to pay and also examined the profits made. Here is the Commission's finding in this respect.[106]

> "On such comparison, we are convinced that in certain goods of common use including certain drugs, exorbitant prices were actually charged by producers who are either the sole producers of the goods or accounted for such a large share of the production that there was no substantial competition and they acted as price leaders. We are refraining from mentioning the particular goods in respect of which we believe this to have happened as that might embarass those who might be called upon to hold any full-fledged inquiry into the matter."

Discussing the restrictive practices, the Commission found the most wide-spread of such practices in the habit of most traders of hoarding whenever any scarcity is present or even apprehended. It is commonest in consumer goods which can be kept in stock for some time without much risk of wastage and deterioration in quality and of which the demand is inelastic.

Artificial scarcity is created by this process by keeping the goods out of the free flow of commerce. Advantage is then taken by the traders of the urgent demands of consumers to make exorbitant profits. The consumer left at the mercy of the unscrupulous traders pays what he is asked to pay. The fear that the articles may soon become wholly unavailable sometimes makes him purchase more than his immediate needs, contributing thus to greater scarcity and strengthening the position of the hoarders. This has happened again and again in recent years in food grains, edible oil, baby food, cosmetics and numerous other articles of daily use; and controls not rigorously enforced have generally proved to be ineffective.[107]

Re-sale price maintenance in which the manufacturers insist the distributors that their goods must not be sold below the price as dictated by them is another widely prevalent practice. It is obvious that this kills competition between the actual distributors of the article and often keeps the prices which the ultimate consumer has to pay higher than they would otherwise have been.

Even more widespread than resale price maintenance is the practice of exclusive dealing contracts which many manufacturers enforce. This consists in a manufacturer telling a dealer that he shall not deal in any competitor's goods. If he does so he will not get the supply of goods from the particular manufacturer.

The practice of fixation of prices by agreement between competitors is also in vogue. The inevitable

consequence of such price fixation agreements is uniform price putting the customer in a disadvantage. Another restrictive practice prevalent among monopolists is what is known as "tie-up" or "tie-in", by which the supplier of some commodity refuses to supply it to the dealer unless the latter agrees also to take from him certain other commodity stocked by the manufacturer. Boycott agreements whereby the producers prohibit the distributors from supplying the products to persons in their "stop list", discriminatory payment of discount to distributors and retailers and agreements among producers restricting output are some of the other restrictive practices noted by the Commission.

Concentrated economic power is a direct threat to political democracy and the declared objectives of our Constitution. The influence of the leading industrialists on the political parties, and in particular, the ruling party has baneful social consequences.[108] The financial assistance that some of the industrialists in the country have given to the ruling party, has lent support to the criticism that big business have considerable influence over Government. In this connection Mr. R.C.Dutt observed as follows in his dissenting note to the Monopolies Inquiry Report:[109]

> "The problem of relationship between the private industrialists and the political parties certainly exists, but in my opinion, this is not the sole or even the main reason for the influence which big business has on the affairs of the State. Concentrated economic power involves control of large resources, and also of large areas of

> production and of the economy as a whole. Those who have this control are in a position to influence the economic policy in a large measure, irrespective entirely of their relationship with political parties, whether in opposition or in power, or even their relationship with individuals in authority. A programme of industrial expansion, for instance, must depend to a large extent on the willingness of the corporate sector to invest their savings for such expansion. Those who control the savings can influence the 'incentives' required for investment and, therefore, the whole set of economic decision which relate to this problem. Employment is another important aspect which necessarily depends on the decisions taken by large employers. Such instances can be multiplied. The fact is that the economy of a country can be influenced to a considerable extent by those engaged in business or production. The larger the concentration of economic power and, therefore, the larger the sector of economy controlled by an individual or group of individuals, the greater is the influence of the individual or the group on the country's economic life. The economic decision of Government do not exist in isolation. They are taken in a certain context, in response to the decisions and attitudes of the persons engaged in economic activities, and must, therefore, necessarily be influenced by the latter. There is still another factor which gives rise to this influence and that is the ability of big business to influence public opinion through their predominance in the press. In a democratic society Government must necessarily be responsive to public opinion. To the extent therefore that articulate public opinion can be influenced by big business, they can also influence the decisions of Government. In my opinion, these are the major sources of the influence which concentrated economic power has on the affairs of the State, and it would not be right to overlook these factors and refer only to the financial assistance by the corporate sector to the funds of the political parties."

Another evil social consequence flowing from concentrated economic power is the practice of big business using their deep pockets to corrupt public officials in their attempt to expand economic power and monopoly position. The Santhanam Committee on Prevention of Corruption found this practice of big business responsible at least partly for the

general degradation in public life in the country. With large quantities of unaccounted money and large amounts saved through tax evasion unscrupulous big business indulge in all types of malpractices making a mockery of democratic administration and rule of law.

In the above discussion we have seen the social and economic consequences of concentrated economic power. Another important factor responsible for the growth of 'lawlessness' in the business world is the persistence of the traditional view that violations of business laws are by and large technical breaches of the law not calling for deterrent punishment. To illustrate the point, the general practice in relation to prosecution, at least in respect of violations of the provisions of Company Law, is that it is resorted to only in those cases where advice, persuasion and warning fail. Even the law courts give a differential treatment to the businessman-criminal who, they seem to believe, will conform to the law by friendly advice, mild pressure and gentle persuasion. The policy of the Company Law Board is to avoid proceedings against companies for minor lapses and to get them rectified by the company managements themselves on the basis of advice tendered by the Regional Directors and Registrars of Companies. And even when prosecuted for persistent violations, the subordinate judiciary generally impose fines of negligible amounts which have no practical value as punishment against a big joint stock company. In some cases the criminals are even let off after a warning. "It is not therefore surprising" according

to the Company Law Administration,[110] "that many unscrupulous company managements still prefer to pay the nominal fines rather than disclose the affairs of the companies which they manage either to the shareholders or to the Registrar of Joint Stock Companies".

The purposes of company law are defeated when nominal fines are imposed in cases where offences have been proved and there are no mitigating circumstances to extenuate the offenders, merely because the offences are erroneously considered to be of a technical nature. Indeed such seemingly trivial offences have in the past been found to provide the basis for more serious malpractices and violations of law, such as breach of fiduciary obligations of management and the failure to observe the rules of corporate accountability.[111] An examination of the nature of violations for which prosecutions were launched by the Company Law Administration indicates that a good percentage of them were for (i) failure to hold the annual general meetings (ii) failure to lay the profit and loss accounts and the balance sheets before the annual meetings, (iii) failure to file the Annual Returns with the Registrar of Companies, (iv) failure to file the balance sheets and profit and loss accounts with the Registrar of Companies and (v) failure of liquidators to file with Registrar of Companies the annual statements showing the position of the liquidation. To safeguard the interests of the shareholders of companies, the provisions of the Act concerning above-mentioned defaults are of paramount importance.

Parliament has recognized this fact and the penalties prescribed for the defaults listed above have been accordingly heavy, viz. Rs.5,000, Rs.1,000, Rs.50 per day, Rs.50 per day and Rs.500 per day respectively. Yet during the year 1961-'62 the fines imposed by the Courts in as many as 67 per cent of the cases where the companies failed to hold annual general meetings in contravention of the relevant provisions of the Act were for amounts not exceeding Rs.25/-(penalty provided by the law being Rs.5,000/-).[112] Such small fines also generate a feeling in the public mind that the defaults in question could be committed with impunity and they are part of successful business practice. It ultimately tends to bring into contempt administration of justice and rule of law.[113]

Criminal Administration of Business Laws: Some Observations:

Considering the enormous amount of public money involved and the serious damage inflicted on public morals and mutual trust one can hold business violations more dangerous to society than traditional property offences. The tax evaders, food adulterators, spurious drug manufacturers, black marketeers, profiteers and monopolists should be grouped by all standards as public enemy "Number One". On the contrary, in our socialist society they go unpunished and enjoy the fruits of their criminal practices. The lax and inadequate provisions of the law, the inefficient and discriminatory enforcement of its provisions by a multitude of official agencies and the exploitation of the well-intentioned safeguards of our democratic legal procedure

are all helpful to the unscrupulous section of big business in perpetrating their illegal activities. The Company Law Administration found it difficult in several cases to proceed against influential company managements because of the dilatory, evasive and obstructive tactics adopted by the parties concerned. They exercise enormous influence on the Government and the ruling party through their periodical contributions to party funds and by dishonest use of their economic power. Even the Court procedure is pressed into service by big business in order to ward off any inquiry into their malpractices and mismanagement. This is abundantly made clear by the Bose Commission Report on Dalmia-Jain Group of Companies. Will it be too much to say that the unscrupulous section of Indian big business has far too long with its wealth and the brains in every field its wealth has enabled it to buy, made a mockery of equitable social behaviour and democratic legal procedures?

If the Constitutional objective of economic development with dispersal of economic power and increasing dispensation of socio-economic justice is to be obtained there is urgent need for progressive changes in the law and procedure relating to the regulation of business, trade, commerce and industry. It is surprising to note that in a professedly socialist country like India there is no law against monopolies and concentration of economic power. Unless the categories of commercial frauds are widened to include what are now called sharp practices, restrictive and monopolistic practices, the control of 'lawlessness' in big business can never be

achieved to any substantial degree. In this connection, the recommendation of the Monopolies Inquiry Commission to set up a Permanent Commission to supervise the Private Sector enterprises would be eminently suitable. A draft bill was prepared and submitted by the Monopolies Commission along with its Report, giving effect to its legislative recommendations. (Appendix III). A bill on the subject with some modifications is now placed on the table of the Rajya Sabha.[114]

The Santhanam Committee on Prevention of corruption suggested the consolidation and incorporation of the various social offences including business crimes, now spread over a number of enactments, into the format of the Indian Penal Code, possibly under a separate chapter.[115] This is also a desirable reform.[116] This would dispel to some extent the prevailing doubt regarding the criminal character of these offences. Further, it is also necessary to provide deterrent punishments including forfeiture of property for serious business violations. If a man is allowed to keep his ill-gotten wealth after paying a nominal fine or serving a few months in prison, he would gladly do this and enjoy the rest of his life with the society having forgotten, or forgiven his crime. If respect for law and administration of justice is to be maintained, it is necessary to ensure that criminals do not go unpunished and the corrupt shall not enjoy the fruits of corruption. Therefore, apart from deterrent punishments, the question of confiscation of assets and forfeiture of civil and political rights in extreme cases should be considered.

Company contributions to political parties should also be totally prohibited or publicly regulated.[117] A bill regulating company donations to political parties now under the consideration of Parliament is reproduced in Appendix IV. As Mr. K.Santhanam, M.P. observed, company donation to political parties amounts to open bribery. The directors of a company do not make any sacrifice themselves; but give away money which ought to be distributed as dividends to shareholders or kept in reserve for the legitimate work of the company. A considerable part of these donations is really the money belonging to the Government as Corporation Tax, Income Tax, and Super Tax. Therefore company contributions indirectly amount to Government financing political parties and the ruling party naturally gets the largest advantage. Further, if the companies are allowed to spend money for political purposes, the result in the long run will be that each big company will have some M.Ps and some members of State legislatures. Thus a large section of our legislatures may consist of representatives of these vested interests and business houses naturally will control the political administration of the country through these men.

There is need for simplification of law and procedure regulating economic activities. Many businessmen complain that laws are so numerous, complex and ambiguous that it is difficult to comply with all its provisions despite their willingness to abide by them. Apart from complex and ambiguous laws - and all laws are ambiguous at their margins

and inevitably so when it deal with the modern complex, changing system of business and commerce - there are a good many cases where management runs afoul of the law simply because they are not aware of its provisions. Management of small-sized companies complain about the large amount of time and labour necessary to preserve a law-abiding record. Sometimes they find it genuinely difficult to comply with the provisions of all laws governing their occupation. Of course, in the case of big business houses there are no such difficulties and their defaults are generally calculated and deliberate.

The benevolent attitude of the early liberalistic era of criminal law is a serious impediment in the effective administration of justice in this new area of criminal law. The traditional criminal procedure is less streamlined to control business crimes as it is hedged in by all the rights and protections accorded to an accused - 'presumption of innocence', 'proof beyond a reasonable doubt' or 'benefit of doubt' etc., and all the practical obstacles frustrating prosecutors. The question of shifting the onus of proof, whenever a prima facie case is established by the prosecution, should be considered in more and more cases of business crimes.[118] It must also be examined whether the findings on fact of competent administrative authorities should be made binding on the criminal courts.[119] A multitude of enforcement agencies under different Ministries of the Government, each looking after a part only of the whole field of business crimes without proper coordination among them is also not conducive to the

effective enforcement of business laws. The feasibility of a unified set up properly coordinated and manned by experts on all aspects of modern business dynamics and a simplified procedure in enforcement deserve immediate attention. As observed by the Bose Commission, the ordinary Courts of law, particularly in the lower level, are ill-fitted for the administration of business laws involving complex technical matters.[120] The creation of special criminal tribunals for trying industrial, commercial, and tax laws is a desirable step and wherever this is not feasible particular judges in different localities may be given exclusive charge of trying only violations of specified business laws. Necessary steps should also be taken for the systematic reporting of business crimes along with other criminal statistics. It may also be considered in appropriate cases whether the offender should be asked to publish at his own expenses in specified newspapers details regarding the offence committed by him and the punishment awarded by the court.[121] This, it is felt, is a most effective deterrent against business crimes.

While the above reforms in law, institutions, and procedure might help in the more effective enforcement of business laws, legislation would make little headway unless trade and industry rise to realize their social responsibilities and prepare to conduct business in public interest as well. The Gandhian principle of trusteeship expresses the inherent responsibility of business enterprise to its consumers, workers, shareholders, and the community at large as well as their mutual responsibilities to one another.[122] Enforcement of

standards of behaviour through laws has its own limitations, particularly when it concerns economic behaviour. Beyond legal obligations, the practices of businessmen must be voluntarily regulated and enforced.

.....

CHAPTER THREE

WHITE COLLAR CRIME IN BUSINESS, TRADE, COMMERCE AND INDUSTRY

REFERENCES AND NOTES

1. Report of the Committee on the Prevention of Corruption (Santhanam Committee), (1964), Para 6; See also Report of the Monopolies Inquiry Commission (1965), p.136, 162.

2. Barnes and Teeters, New Horizons in Criminology (1943), p.21.

3. Report of the Commission of Inquiry (1963) - Inquiry on the Administration of the Dalmia-Jain Companies, Ministry of C & I, Government of India, (Vivian Bose Commission Report).

4. Santhanam Committee Report, p. 18 and p.65.

5. Economic Review, January 28, 1964 at p. 28.

6. Professor Nicholas Kaldor on Indian Tax Reform (1956) p.105.

7. Vivian Bose Report, Chapter IV.

8. Sutherland, White Collar Crime (1949), pp. 49 - 51.

9. Bhandari, J. in R.L.Mehra Vs. Emperor, 47 Cr. L.J. 44 at p. 49.

10. Sutherland, White Collar Crime (1961) p. 47.

11. Illustrative of these laws are: The Indian Companies Act (I of 1956); The Essential Commodities Act (X of 1956); The Prevention of Food Adulteration Act (XXXIV of 1954); The Forward Contracts (Regulation) Act (XXIV of 1952); The Foreign Exchange (Regulation)Act (VII of 1947); The Trade Marks and Merchandise Act (XLIII of 1958); The Drugs and Cosmetics Act, 1940; The Customs Act (LII of 1962); The Industries (Development and Regulation) Act, 1951; The Imports and Exports (Control) Act, 1947 etc., etc.

12. Winifred Bose, "The Trader", Opinion dated January 5, 1965 at p. 6.

13. Robert Rice, The Business of Crime (N.Y.)

14. It is pointed out that Mr. Shriyans Prasad Jain, whom the Bose Commission held responsible for serious irregularities with respect to D.J. Group of Companies, was the president of the Federation of Indian Chamber of Commerce and Industry at the time of publication of the Bose Inquiry Report.

15. See generally, The Hardships of a Consumer, National Consumer Service, Central Bharat Sewak Samaj, N.Delhi(1964

16. Annual Reports on the working of the Indian Companies Act, 1956 (Govt. of India); Audit Reports and Reports of the Public Accounts Committee of Parliament on the working of the various Ministries/Departments/Public Sector Undertakings etc.; Annual Reports of the Special Police Establishment, Delhi; Report of the Bose Commission on the working of the Dalmia-Jain Group of Companies (1963); Santhanam Committee Report on Prevention of Corruption (1964). Unfortunately statistics and data on the prosecutions under the Prevention of Food Adulteration Act, 1954 Drugs and Cosmetics Act, 1940, Foreign Exchange Regulation Act, 1947, Customs Act, 1962, Imports and Exports (Control) Act, 1947, Essential Commodities Act, 1955, Trade Marks and Merchandise Act, 1958, Income-tax Act, 1961 etc., etc. are not readily available to the public except occasional newspaper reports of a few sensational cases involving big business.

17. See generally Progress of Prosecutions under the Companies Act; The Tenth Annual Report on the working of the Indian Companies Act, 1956, Department of Company Affairs, Ministry of Law, Government of India at p.39.

18. The Bose Commission Report on the working of the D.J. Group of Companies throws much light on the manipulation and exploitation of both money and power by directors of public companies to advance their selfish interests.
See generally chapters II, III, IV and V.

19. Ibid. Also see Monopolies Inquiry Commission Report, Govt. of India (1965)

20. Ibid. Also see Santhanam Committee Report on Prevention of Corruption (1964); Chagla Commission Report on L.I.C investments in Mundhra Concerns (1961); Hazare Report on the system of Industrial Licensing (1967); Mahalanobis Committee Report on Distribution of Income and Levels of Living (1964).

21. Demands were made in Parliament for the nationalization of foreign trade, banking, general insurance etc., etc. The willingness of the party in power at the Centre to progressively adopt such measures if necessary is abundantly reflected in the economic resolutions passed by the All India Congress Committee at its successive annual sessions since 1964. The scheme for social control of banks that is now mooted and bills on monopolies and Lokpal that are being considered by Parliament are obvious illustrations of this trend.
See Times of India (Delhi) dated 11th December 1967;

(see next page)

Socialist Congressman Vol.III, No.11 & 12 (1963) and A.I.C.C. Economic Review dated January 28, 1964.

22. The Administration of the Pure Food and Drug Laws is a case in point. The failure to protect the people's health is explained in terms of the paucity of funds and inadequacy of laboratory facilities and qualified personnel. See generally annual reports of the Ministry of Health, Government of India.

23. The administration of tax laws at the Centre illustrates this complexity and confusion. Various attempts to simplify the procedure so as to minimise evasion of tax have not been successful to any substantial degree.

24. Violations of licensing regulations, tax laws, customs rules, import/export control orders, foreign exchange violations etc., are seldom reported. They are administratively dealt with and the authorities keep them as closed secret. There are detected instances in which firms censured/blacklisted or otherwise punished by one Ministry of Government of India are favoured by another Ministry/Department either because of the ignorance of the earlier violations or because of underhand methods or favouritism - See generally Hazare Report on Industrial Licensing (1967).

25. Report on the working of the Companies Act, 1956.

26. Annual Reports of the Enforcement Directorate (Foreign Exchange), Ministry of Finance, Govt. of India.

27. Santhanam Committee Report, p. 253.

28. Civic Affairs, March 1962.

29. Santhanam Committee Report (1964) p. 18 and 65; See also the Annual Reports of the Special Police Establishment, Delhi.

30. Report of the Ad Hoc Committee on Quality Control and Pre-Shipment Inspection (1963) Ministry of C & I, Govt. of India, pp.92-98.

31. A.I.C.C. Economic Review, January 28, 1964 at p. 28.

32. Appendix I.

33. Vivian Bose Commission Report (1963), Supra.

34. Ibid., pp. 53 - 55.

35. Ibid., pp. 11.

36. Ibid., p. 15.

37. Ibid., p. 20.

38. Ibid. pp.61 - 176.

39. Ibid. p.174

40. Ibid. pp.23 - 35.

41. Ibid. p.31

42. Ibid. p.32.

43. Ibid. pp.213 - 250.

44. Ibid. p.463.

45. Ibid. p.45.

46. S.N.Dwivedy and G.S. Bhargava, Political Corruption in India (1967), Chapter on "Mundhra Episode".

47. Third and Fourth Annual Reports on the working of the Indian Companies Act, 1956, Govt. of India, p. 65.

48. Adulteration of food and drugs being a serious menace in India today, a separate chapter is devoted in this study (Chapter IV, infra) on that problem.

49. The statutory provisions penalising such behaviours are listed in Appendix II.

50. Report of the Monopolies Inquiry Commission (1965) at p. 162.

51. Ibid. p. 136.

52. Santhanam Committee Report (1964) pp. 11 - 12.

53. Kaveeshwar, D.N., A Critical Analysis of Legal and Monetary Aspects of Chit Funds (1967), Research Division, Central Bureau of Investigation, Government of India, N.Delhi

54. Ibid. pp. 7 - 24.

55. Ibid. pp. 23 - 24.

56. Also see 'Advertisement and Criminality', infra.

57. Kaveeshwar, D.N., Chit Funds (C.B.I) Supra, p. 5.

58. Ibid. p. 2.

59. Ibid. p. 3.

60. Section 294 - A.Indian Penal Code reads as follows:

"294-A. Whoever keeps any office or place for the purpose of drawing any lottery, not being a State lottery or a lottery authorised by the State Government, shall be

punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, or on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees."

Also see the following judicial decisions:
(i) Shesha Iyer Vs. Krishna Iyer, 59 Madras 562.
(ii)Public Prosecutor Vs. Muniswami Naidu, 35 Cr.L.J.1232.

61. Kaveeshwar, D.N., Chit Funds (C.B.I), Supra., pp. 36 - 37

62. Halloran James, D., Control or Consent? A study of the Challenge of Mass Communication, Sheed & Ward, London (1963) p. 54.

63. Total expenditure on advertisements in India has increased from Rs.7 crores in 1952-53 to Rs.30 crores in 1963-64.
See M.V. Namjoshi, Monopolies In India, Lalvani Publishing House, Bombay (1966) p. 90.

64. Ibid., P. 93.

65. For example, the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.

66. Final Report of the Committee on Consumer Protection, Her Majesty's Stationery Office (London) Cmnd. 1781 (1962) Part VI, p. 239.

67. Ibid. p. 240.

68. Brown J.A.C. Techniques of Persuasion, Penguin Books (1963)

69. Final Report of the Committee on Consumer Protection, Supra p. 239.

70. The findings are based on a survey of the commercial advertisements which appeared in the Hindustan Times, Statesman, Times of India and Indian Express during the two-month period - May-June 1967. The degree of exaggeration, misrepresentation and deception in them could not be ascertained for want of research data and technical details. Nonetheless, their persuasive nature, emotional appeals, misleading emphasis, meaningless claims and tendency towards irrational motivation were so obvious as to lead to the conclusions made herein.

71. Report of the Drugs Enquiry Commission, West Bengal (1964) p. 116.

72. James Halloran, Control or Consent? Supra, pp.78-79 and 84-85.

73. Seventh Annual Report on the working of the Indian Companies Act, 1956, Govt. of India, p. 42.

74. Bose Commission Report on Dalmia-Jain Companies and Chagla Commission Report on L.I.C - Mundhra deals speak abundantly on the financial and industrial empire-building of the Indian big business.

75. Report of the Monopolies Inquiry Commission, 1965, Vols. I & II, Govt. of India.

76. Report of the Committee on Distribution of Income and Levels of Living, Part I on Distribution of Income and Wealth and Concentration of Economic Power, 1964, Planning Commission; Govt. of India.

77. Ibid. pp. 25 - 30.

78. Report of the Monopolies Inquiry Commission, Supra, Chapter IV, pp. 33 - 124.

79. Raj K. Nigam and N.D. Joshi, "All India Survey of Company Directorships Pertaining to Big-sized Companies", COMMERCE dated 8.12.1962; Also see 'SOCIALIST CONGRESSMAN' dated March 1, 1963, p. 13.

80. Hazare, R.K., The Structure of Private Corporate Sector (1963), Bombay.

81. Report of the Mahalanobis Committee, Supra, pp. 38 - 43.

82. Ibid., pp. 40 - 41.

83. R.K. Hazare, The Structure of the Corporate Private Sector, quoted in Mahalanobis Report, supra, p. 43.

84. Report of the Mahalanobis Committee, supra, pp. 44 - 45.

85. In pursuance of the recommendation of the Managing Agency Enquiry Committee, Government have progressively adopted a policy of discouragement of the managing agency system in the sugar, cotton textile, cement and some other industries. For a detailed analysis of the working of the managing agency system see, the Report of the Managing Agency Enquiry Committee, Ministry of Law, Govt. of India (1966).

86. Quoted in Report of the Mahalanobis Committee, Supra, p. 52.

87. Ibid. p. 46.

88. Ibid. pp. 46 - 47.

89. Also see, Raj K. Nigam and N.D. Joshi on "Interlocking of Directorships in Marketing and Manufacturing Companies", Mainstream dt. March 16, 1963.

90. Quoted in Report of the Mahalanobis Committee, supra, p.48.

91. See 'Bank Ownership Intertwined with Big Business: Example of Birlas', SOCIALIST CONGRESSMAN, September 25, 1963 at p. 32.

92. Malaviya H.D., Press Monopolies in India, SOCIALIST CONGRESSMAN, January 26, 1963, February 15, 1963 at p. 7 and March 1, 1963 at p. 13.

93. Quoted in Mahalanobis Report, Supra, p. 52.

94. For the study of ownership of newspapers with special reference to trends in the direction of common ownership, all papers (dailies as well as periodicals) coming under common ownership are divided into three categories,

(i) Chains: Publication of more than one newspaper under common ownership from more than one centre.

(ii) Groups: Publications of more than one newspaper under common ownership from the same centre.

(iii) Multiple Units: Publication of more than one newspaper of the same title, language, and periodicity under common ownership from different centres.

See Annual Report of the Registrar of Newspapers, Govt. of India, 1960.

95. Third Annual Report on the working of the Indian Companies Act, 1956, Govt. of India.

96. Mention may be made in this connection to section 10(2) (vi), 56-A and 150 of the Income Tax Act, 1961; Also see Mahalanobis Report, Supra, p. 31.

97. Annual Report of the L.I.C for the year 1960 - quoted in Mahalanobis Report, Supra at p. 35.

98. See Dwivedy and Bhargava, Political Corruption in India (1967).

99. See W. Friedmann (ed.), Anti-Trust Laws: A Comparative Symposium, 1956 and Monopolies Inquiry Commission Report, 1965, Chapter VIII, Foreign Legislation.

100. Monopolies Inquiry Commission Report, 1965, Supra, p.126.

101. Ibid. p. 137.

102. Ibid. p. 187.

103. Ibid. Part II, Chapter V, pp. 127-134.

104. Ibid. p. 128.

105. Ibid. pp. 128-129.

106. Ibid. pp. 128-129.

107. Ibid. p. 129.

108. See M.V. Namjoshi, Monopolies in India, Bombay, 1966, Chapter 8 - 'Big Business and Indian Politics'.

109. Fourth Annual Report on the working of the Indian Companies Act, 1956, Govt. of India, p. 66.

110. Ibid. pp. 66 - 67.

111. Sixth Annual Report on the working of the Indian Companies Act, 1956, Govt. of India, pp. 76 - 77.

112. Ibid. p. 77.

113. See 1958 Andhra Law Times, p. 856.

114. Monopolies Bill, 1967, Rajya Sabha, April 1968.

115. Report of the Santhanam Committee, 1964, supra, p. 54.

116. It may be noted that the Law Commission of India considered this recommendation and largely found to be untenable and undesirable - Twentyninth Report of the Law Commission of India, February 1966. However, the researcher hold the contrary opinion and is in agreement with the Santhanam Committee on this issue.

117. A bill to this effect is introduced in Parliament by Mr. Fakhruddin Ali Ahmed, Minister for Industrial Development in its Budget Session, April 1968.

118. Such special rules of evidence are already incorporated in certain laws, viz. Essential Commodities Act, 1955 (section 14); Customs Act, 1962 (section 123); Prevention of Corruption Act, 1947 (section 5) etc.

119. See on this point, Mannheim, H. Criminal Justice and Social Reconstruction (1949), pp. 192 - 193.

120. Bose Commission Report, 1963, supra, p. 29.

121. Such provisions are already there in some laws, though they are sparingly used. e.g., Prevention of Food Adulteration Act, 1954, section 16 (2)

122. See in this connection; Declaration of the International Seminar on Social Responsibilities of Business, New Delhi, March 1965, and Souvenir published on the occasion of the Calcutta Seminar on Social Responsibilities of Business, March 1966.

••••

CHAPTER FOUR

EVASION AND AVOIDANCE OF TAX

Tax evasion and avoidance and the financial corruption that goes with it are problems of great public importance not only in the field of tax legislation and revenue administration but also of serious consequence to the financial security and economic development of the country as a whole. It is an accepted fact that considerable revenue is lost to the exchequer every year through escape of tax. The moral and material consequences of this widespread anti-social practice seem to be not fully appreciated by the public at large who are victims of the tax crimes of their dishonest fellowmen. Tax evaders increase *pro tanto* the load of tax on the shoulders of the great body of citizens who do not desire, or do not know how, to adopt these manoeuvres. Their actions breed disrespect for law and authority. Their success and material prosperity attract others into their fold and tend to promote lawlessness in society. Such men, with the help of their ill-gotten wealth, corrupt the civil servants and public life generally, retard the pace of economic growth, and jeopardise the political independence of the Nation. The importance of the problem in a newly-independent, developing country like India cannot therefore be over-estimated. Of course, the problem is neither new nor peculiar to India. It is prevalent in almost all countries in varying degrees. But, in India, the evil has grown considerably over the years

despite all the efforts of the authorities to eliminate it.

Enforcement of the Tax Structure in India:

Administration of tax enactments presents so many technical and complicated problems of facts and law that it is difficult for an ordinary person to understand the intricacies involved. A study of the problem of evasion and avoidance of tax necessarily demands a close insight into the nature, working and administration of the laws in question. A detailed study of all these aspects is outside the scope of the present enquiry. What is attempted here is a general survey of the tax structure and its enforcement through criminal sanctions.

In a large federal country like India, the tax system cannot hope to achieve the neat clarity and simplicity of a small country with a unitary constitution. It is an incontrovertible fact that Indian taxes are heavily cumbersome to administer. Avoidance and evasion on the one hand, and checks and more rigorous checks on the other, create a vicious spiral of increasing cumbersomeness and complexity. First a loophole is found, and it is carefully plugged; the remedy starts a new disease, with new complications; and this chain reaction goes on. A noted industrilist is said to have remarked:[1] "A few intelligent men in New Delhi impose the taxes; they forget that there are many more and far more intelligent men outside to find loopholes in the taxes".

It is thus an unending struggle between the Government on the one hand and the very clever evaders of taxes on the other, and the marks of the struggle are visible clearly on our complex, cumbersome and almost baffling tax system.

In this chapter the attempt is only to guage the immensity of the problem of evasion and avoidance in relation to administration of criminal justice. And, for this limited purpose, a brief survey of the different tax enactments and their general administration is made hereunder.

The major heads of taxes in operation under the two categories of direct and indirect taxes are: Income Tax, Wealth Tax, Estate Duty, Sales Tax etc. These taxes are all administered under separate statutes like the Income Tax Act, 1961, The Companies (Profits) Sur Tax Act, 1964, Estate Duty Act, 1953, Wealth Tax Act, 1957, The Gift Tax Act, 1958, The Expenditure Tax Act, 1957 etc. Though the Acts differ fundamentally from each other as regards the base of tax, the rates of levy etc., a good deal of uniformity in the procedures relating to matters like assessments, appeals and collections exists. Changes in the tax laws are effected either through the Finance Acts passed every year to give effect to the financial proposals of the Government or through particular amending Acts. The Central Board of Revenue which is a part of the Ministry of Finance of the Government of India

is responsible for administration of the various direct and indirect central revenue laws in the country. The Board exercises over-all supervision and control over the several administrative and subordinate authorities functioning under the various statutes. The Board also functions as the Department of Revenue of the Government of India and in this capacity it has the responsibility for advising the Government on various matters of tax policy.

Commissioners of Income Tax have been appointed for almost all states and principal cities, such as Bombay, Calcutta etc. Assistant Commissioners of Tax who may be either Inspecting Assistant Commissioners or Appellate Assistant Commissioners work under the supervision of Commissioners. Income Tax Officers who actually perform duties relating to assessment of taxes work under the Assistant Commissioners of Income Tax. Against assessments made by Income Tax Officers, an assessee is entitled to file appeals, if desired, to the Appellate Assistant Commissioners within the prescribed periods after assessment. The Appellate Assistant Commissioners exercise their quasi-judicial functions though they are supposed to be administratively under the Commissioner of Taxes. Against the decision of Appellate Assistant Commissioners, an assessee is allowed the right to file further appeal to the Income Tax Appellate Tribunal. The Appellate Tribunal is the final authority only in question of fact and the assessee is entitled to refer questions of law to the High Court and Supreme Court of India.

It is the duty of an assessee or tax payer to file voluntarily, within the prescribed time, necessary return of income in respect of direct taxes for which he may be liable. After receipt of the return of income the income tax officer would call, if necessary, for further information or request the tax payer to attend for discussion in person or through a representative. Later the necessary assessment order will be passed by the Income Tax Officer. Collection of taxes is made in one or more of the following modes: (i) By deduction at source of payment, (ii) By advance payment of tax from assessees in the financial year preceding the assessment year, and (iii) By taxes paid on the basis of provisional assessment made by Income Tax Officer after submission of Returns of Income.

Because of frequent amendments and hasty legislation, tax laws, generally speaking, suffer from loose and bad drafting and unnecessary technicalities. Thus, the whole income-tax structure has now become a veritable tangled web of all sorts of clauses and provisions and qualifications and exceptions confusing even tax experts and tax consultants. This complexity and confusion of the legislation and administration of taxes have had adverse economic and social effects, besides impairing administrative efficiency[2].

The Criminal Law of Taxation:

The criminal enforcement of tax legislation is based upon the distinction between 'tax evasion' and

'tax avoidance'. In theory, this distinction is simple and straightforward: evasion constitutes a violation of the criminal law with all its consequences, whereas mere avoidance means some more or less artful juggling which, though in all probability very anti-social in consequences, still manages to keep within the letter of the law.[3] The term tax avoidance refers to arrangements by which a person, acting within the letter of the law, reduces his true tax liability, infringing, in the process, both the spirit and the intent of the law.[4] Though it is distinctly anti-social deserving penal liability, yet it has acquired a colour of legality about it. Nowadays books are available in the market written by tax experts openly announcing ways and means to reduce tax liability or to completely avoid it. However legal and justified avoidance be, evasion, on the other hand, denotes plain defrauding of revenue through illegal acts and deliberate suppression or falsification of the facts relating to one's true tax liability. In whatever way one looks at it the line of demarcation between the conduct of one who avoids and another who evades tax, is very thin. Sometimes, the distinction, is made between "evasion" and the "minimizing" of taxes. "Minimizing" in this context is taken to mean the reduction of legal tax liability to the lowest possible amount through the skilful utilization of every legitimate method.[5] The Taxation Enquiry Commission, 1953 - '54 expressed succinctly the distinction in the

following words:

> "Leakage in revenue may occur either through a deliberate distortion of facts relating to an assessment after the liability has been incurred, or by so arranging one's affairs before the liability is incurred as to prevent its occurrence or to reduce the incidence of the tax within the framework of the existing legislation. The former set of transactions is usually referred to as 'evasion' and the latter as 'avoidance' .....Avoidance ordinarily arises from drafting defects in the tax legislation".

Whatever be the method an assessee adopts - whether it be avoidance or evasion - the consequence of his action is the same, viz., loss of revenue to the State and an increase pro tanto in the burden of tax on the other tax payers who do not resort to such practices. In this respect the following observations made by President Roosevelt in his message to the U.S. Congress in 1937 are noteworthy:[6]

> "Methods of escape or intended escape from tax liability are many. Some are instances of avoidance which appear to have the colour of legality; others are on the border line of legality; others are plainly contrary even to the letter of law. All are alike in that they are definitely contrary to the spirit of the law. All are alike that they represent a determined effort on the part of those who use them to dodge the payment of taxes which Congress bases on ability to pay. All are alike in that failure to pay results in shifting the tax load to the shoulders of others less able to pay, and in mulcting the Treasury of the Government's just due".

Courts of law in this country have upheld the right of a tax payer to secure reduction in his liability by making use of the loopholes in the law.[7] The following passage in the judgment in a Bombay case puts the matter

clearly:[8]

> "It has also been stated that the same result may be achieved by two entirely different transactions, and it may be that whereas one transaction could be subjected to tax the other might not be, and it is not open to the Court to tell the assessee that he could rather have entered into a transaction which subjected him to taxation rather than a transaction which permitted him to escape taxation. A citizen is perfectly entitled to exercise his ingenuity so as to arrange his affairs as may make it possible for him legally and lawfully not to pay tax, and if his ingenuity succeeds, however reluctant the Court may be to acknowledge the cleverness of the assessee, the Court must give effect to the letter of the taxation law rather than strain that letter against the assessee".

The following observations of the Supreme Court in a recent case[9] may also be referred to in this connection:

> "Sub-section (2) of section 21 (of the Bombay Sales-tax Act 3 of 1953) is a penal provision contained in a taxing statute and the Court cannot speculate contrary to the plain intendment of the words used about the object of the Legislature. If the Legislature has failed to clarify its meaning by the use of appropriate language, the benefit thereof must go to the tax payer. It is settled law that in case of doubt, that interpretation of a taxing statute which is beneficial to the taxpayer must be adopted".

Tax avoidance has thus acquired legal sanction and come to be regarded as not disrespectable. But in view of the fact that the number of tax dodgers are increasing and a larger number of tax payers are turning dishonest,[10] the State is bound to adopt stricter penal sanctions and extend them even to cases of tax avoidance. This tendency is evident in the new steps taken under the Finance Act, 1964.[11] From the sociological point of view, the dubious and artificial distinction that surrounds this

large area of anti-social behaviour does not make any difference in the matter of their being grouped together under White Collar Crimes.[12] With taxation becoming increasingly heavy and tax dodging correspondingly frequent, Parliament has found it more and more imperative to include in the annual Finance Acts special provisions for checking evasion and prevention of avoidance. Thus, the Finance Act of 1964, included a provision prescribing a minimum of six months' imprisonment for people convicted of making false income tax declaration.[13] Further, the Act stipulated that an assessee should be regarded as having concealed his income if his declared income fell short of 80 per cent of his income as assessed by the Government. The Act had put the onus of proof on the assessee to prove that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part.[14] In reply to some criticisms alleging that this was a violation of fundamental legal principles and normal cannons of jurisprudence, the Finance Minister held that normal principles of jurisprudence if applied to tax collection, tax would not be collected and the great social evil of evasion would continue.[15] There are provisions in other countries including the United Kingdom where the onus of proving that the omission to disclose income did not proceed from any fraud or wilful neglect is on the assessee himself.[16] The Tyagi Committee also recommended similar provisions in the direct taxes Acts.[17] After all, the facts relating to income, wealth, expenditure

etc., are known only to the taxpayer and, if he does not disclose all of them to the assessing officer, the task of the latter in determining the correct tax liability becomes very difficult. In cases where the taxpayer himself does not bring to light all the material facts, the assessing officer has to collect the relevant information acting within the limited powers given to him. In this 'unequal battle' it is only necessary that the law should be suitably modified even if it amounts to a departure from principles of traditional criminal jurisprudence.

The really dangerous tax offender does not evade; he avoids. Under the protective cover of the safeguards provided by law he dishonestly exploits the loopholes in the law and violates its spirit and object. Discussing the legal and socio-economic problems involved in tax avoidance, one writer made the following general observations[18] which seem to be of particular importance to Indian conditions today:

> "(a) Might not the time have arrived for the working out of a new philosophy of tax paying ..... recognizing the simple fact that there is indeed behind taxation laws just as much, or just as little, 'moral obligation' as there is behind other laws against economic crime. As soon as it is realized that the financial needs of the State, if backed by the law, have to be respected just as much as individual property, it will have to be admitted that taxation fraud stands in no way on a moral level superior to that of stealing and looting."
>
> "(b) The backing of the law is, of course, indispensable, and it is here that the difference between 'evasion' and 'avoidance' will have to be re-examined in the light

of recent developments. Should it really be beyond the wits of men to conquer the seemingly impregnable fortress of what is now called 'avoidance' by splitting it up into two parts: the one consisting of acts which are in conformity not only with the letter but also with the spirit of the law; the other 'tax-dodging' pure and simple, and distinct from "evasion" only by its lack of straightforwardness? Unless a general formula is found to carry through this distinction, the legislator will have to continue to tread the wearisome path to casuistry, exemplified by those sections of the Finance Acts which try to deal with specific forms of avoidance. The more closely the various types of tax-dodging are scrutinized that have in recent times come to the notice of the public, the more clearly seem to stand out the criteria which distinguish them from perfectly legitimate economic behaviour: first, they are characterized by activity as contrasted with mere omission; and, secondly, from an objective point of view no economic reasons other than tax avoidance are visible behind such activity or, if there are, their weight is disproportionately small".

"To make the distinction dependent upon subjective criteria such as 'purpose' or 'motive' seems to be out of place in provision aiming merely at the nullification of economic effects which are contrary to the aims of taxation laws. The exclusive test should be the objective one of economic effect or benefit".

"(c)It is difficult to see, however, why the legislator has so far abstained from making even the most drastic cases of tax avoidance criminal offences. In the scale of anti-social activities they rank very high....."

"If this should be done and the worst cases of tax avoidance made criminal offences, the subjective test of purpose or motive would, of course, become indispensable in addition to the objective one".

"(d)Such a tripartite scheme; legal in every respect - illegal with no other consequences than nullity of the transactions for taxation purposes - illegal and criminal, whether as evasion proper or as criminal avoidance - clearly requires a well-thought-out system of distribution of powers between administrative

> authorities and criminal courts. Should it be left to the former to deal with the objective criteria, i.e., the factual side and the economic implications of the transactions, and the latter to decide the subjective test of purpose or motive? Occasionally, magistrates might find it impossible to discover any disreputable motive in cases concerning 'respectable people'; the majority of them, however, will probably be able to draw the right conclusions from the economic situation as elucidated in the findings of the administration - findings which should be binding with regard to the external facts."

It is now recognized that a two-pronged move plugging the loopholes in the law and making the enforcement machinery more efficient and stronger is necessary to check the evil of tax evasion and avoidance.[19] While making a pointed reference to the limitations of the existing machinery, the then Finance Minister Mr. T.T. Krishnamachari said in the course of the second Feroze Memorial Lecture[20]:

> "I feel the circumstances obtaining in the country need the creation of a special tribunal the constitution of which and the disciplinary control over which does not lie in the hands of the executive, but is vested in the highest organs of the judiciary. The procedure to be followed by this tribunal should not be elongated as it happens in the case of orthdox judicial bodies administering the common law and some kind of summary procedure which has to be arrived at with the assistance of lay and expert assessors, where a final appeal under Articles 32 and 226 of the Constitution is considerably limited, seems to be called for."

However, it is beyond doubt that for the expeditious disposal of assessment proceedings and for the full collection of tax due to the State, it is necessary that some revolutionary changes in the law and its enforcement are called for. Such changes may

necessitate some radical departures from the traditional practices and procedures as discussed above and as endorsed partially in the Finance Act of 1964.

As such the tax system is working perniciously. While certain classes evaded the tax, others, e.g. the salaried class have had to pay the full rates. This undermines public morality for it unnecessarily penalises certain classes while ignoring the real criminals. This happens as follows: When the Government revenue falls below the budget estimate due to tax evasions, they will be obliged to impose more taxes on the honest tax-payers and raise loans to meet the expenditure to which they are already committed. The tax evaders may invest the evaded tax money in the loans and collect interest thereon from the honest tax-payers! Thus the honest tax-payers pay their legitimate dues, pay the extra taxes to make up for the tax-evaders and also pay interest on the tax evaders' investment in loans! It amounts to penalising honesty and rewarding dishonesty. It brings Government into disrepute and promotes financial corruption in a still larger scale.

Extent of Evasion:

It is difficult to ascertain with any degree of accuracy the extent of tax evaded every year in the country. In no country has it been possible to do so and the difficulties involved in the process have been acknowledged by the various enquiry bodies, both in India and abroad.

In 1956 Professor Nicholas Kaldor of the University of Cambridge, who was invited by the Government of India to undertake a review of the system of direct taxation in this country, reported on the basis of certain tentative figures relating to national income supplied to him by the Central Statistical Organization that the amount of income tax lost through evasion amounted to between Rs.200 crores and Rs.300 crores for the assessment year 1953 - '54.[21] As against this, the Central Board of Revenue was of the opinion that the tax evaded in that year would not have exceeded Rs.20 crores to Rs.30 crores. It is very likely judging from the increasing trend of evasion in subsequent years, that the CBR figure has under-estimated the extent of the evil. However, it has to be conceded that it is no negligible amount to be allowed to be lost through mere evasion.

No estimate has so far been made of the revenue lost to the State by means of evasion or avoidance of other taxes (Wealth Tax, Expenditure Tax, Customs Duty, Sales Tax, Estate Duty etc.). According to conservative estimates the leakage has been anywhere between 25 per cent to 40 per cent of the amount. Such leakage is sizeable in a poor developing country like India.

While the difficulties inherent in any attempt at estimating the extent of evasion are obvious, it cannot be denied that the evil is now very common in this country at all levels of income. It is particularly pervasive

in the corporate private sector and non-salaried professionals like businessmen, contractors, doctors, lawyers and film artistes. The Income Tax Investigation Commission had in the 1,058 cases investigated by it,[22] detected concealed income of order of Rs.48 crores. The tax and penalty levied in respect of this evaded income amounted to Rs.29.42 crores. Concealed income amounting to Rs.70 crores was disclosed by the assessees themselves under the "Voluntary Disclosure Scheme of 1951" in 20,912 cases, and additional tax and penalty amounting to nearly Rs.11 crores was demanded on this score. Besides, considerable amount of escaped income is brought to tax, every year, by the efforts of the Income Tax Department under the provisions of Section 34 of the Income-Tax Act. During 1958-59 concealed income amounting to Rs.31.10 crores was assessed in 27,343 cases resulting in additional tax and penalty of Rs.15.84 crores under section 34(1) (a) and (b) of the Act.[23] An unofficial estimate of the Central Board of Revenue is that about Rs.45 crores of tax is evaded annually by assessees in the higher income groups, the evaded income being about Rs.230 crores.[24] A team of tax experts from the U.S.A, which recently made a study of Indian tax laws and the structure of personal taxation was understood to have come to the conclusion that in this country several thousands of people are totally evading taxation and an even larger number was paying only a fraction of the taxes due from them.[25] The team found this practice widely prevalent in those areas where income was derived from

business, profession or vocation. In the cases of salaried-class, evasion is most unlikely because the tax gets deducted at the very source, before the income reaches the taxpayer's pockets. The Finance Minister was reported to have confided that the section of people evading taxes had widened in recent years and that only 40 per cent of the taxes was now being actually collected.[26] The above figures and facts conclusively prove the magnitude of the problem of tax evasion in India.

Methods of Evasion of Tax

As has already been noticed, the business community and a few other professional classes of people form the majority of tax evaders and the methods they employ are diverse, technical, complex and ingenious. Under-statement of income on returns is the principal mode of practising fraudulent evasion.[27] Two of the important methods employed by businessmen to evade taxes are: (i) Under-voicing and over-voicing the deal or contract and (ii) the distribution and division of the sources of income.[28] In the case of undervoicing and overvoicing racket the actual income is concealed and illegal profits are obtained. Unscrupulous businessmen make underhand arrangements with their offices or collaborators in foreign countries so that the goods going out of India were undercharged. The goods imported into the country from abroad were shown as of much greater value. The amounts thus made were held by their agents or banks in foreign countries or by their foreign collaborators in

business, thus placing an illegal stock of foreign exchange in their hands.

This technique of underinvoicing and overinvoicing of goods also leads to what is called black money that pass hands without public account. The volume of unaccounted black money in the hands of 2000 to 3000 of our dishonest businessmen has been variously estimated between Rs.3000 crores to Rs.4000 crores. It is just unrecorded gains or ill-gotten wealth which does not form part of a legal transaction, and as such escapes all taxes. The introduction of this huge ill-gotten wealth back into trade and commerce, without being detected by the Income Tax Department, has been a problem with the holders of such money. Many use it for ostentatious consumption. Many others converted it into non-detectable assets in the form of bullion or precious metal. Now the tendency of such hoarders of black money is to buy urban property and exploit the housing shortage in expanding big cities. To buy and sell properties at prices much greater than those recorded in the conveyance deeds has become a common method of cheating the government of taxes and of transferring black money. In Bombay a system of bogus hundi transactions was reported to have been successfully practised in an extensive scale to defraud the Income Tax authorities.[29] Black money is also used for speculative purposes in trade for hoarding of scarce commodities the sale of which yields more black money. The Santhanam Committee on Prevention of Corruption

found the money being used by unscrupulous businessmen to corrupt public officials and expand their industrial-financial empires. According to a former Finance Minister of the Government of India black money is playing havoc in the country's economy and is leading to greater inequalities amongst the people.[30]

A few illustrative cases of the holding of black money and tax evasion by big business may be noted here. In its inquiry on the administration of the Dalmia-Jain Companies, the Vivian Bose Commission found 114 fictitious persons to whom shares worth Rs.16 lakhs were fraudulently issued in order to bring the secret profits of the D.J. Group into circulation and convert it into what is known as "White Money". The Commission also observed from what had happened before the Income Tax Investigation Commission that the Group did have over Rs.4 crores of secret and undisclosed assets down to the year 1947.[31] The Commission also estimated the gains made at cost of exchequer by just four companies of the D.J. Group by evading or avoiding taxes to the tune of Rs.1,45,19,790. The methods employed for this purpose included compensation payment for termination of selling and managing agencies, understatement of sales, suppression of profits, fictitious losses in shares etc.[32]

According to the Commission's report, avoidance of income tax liability was done as follows:[33]

"(a) By suppressing taxable profits by manipulation of accounts;

(b) By extinguishing reserves and accumulated profits before taking the companies into liquidation;

(c) By introducing secret profits under cover of share money by allotting shares to non-existent persons;

(d) By transferring the assets and liabilities of companies that were taken into liquidation while their Income-tax liabilities for the periods upto the dates of liquidation were yet to be determined by initiation and/or completion of the relevant assessment proceedings".

More recently, a Calcutta firm, Bird and Company was fined Rs.1.65 crores in two cases of tax evasion accomplished by means of under-invoicing of jute goods and iron ore.

Large-scale tax evasion by speculative magnates in the stock market is known to anyone acquainted with the stock markets in the cities like Bombay, Calcutta or Ahmedabad. By trading in oil seeds or cotton or shares they make huge profits every day which seldom appear in the return of the income liable to tax. It generally disappears through being spread over a large number of Benami transactions. Income declarations fall due only after the end of the year and their examination is not taken up for at least several months more, so that the opportunity for adjustment is ample.

The practice of benami transactions is frequently resorted to for evading taxes. In a benami transaction, the property is acquired or held in the name of a person other than the real owner without any intention to give such

a person the benefit of the real ownership of the property. Such a person is commonly known as benamidar or ostensible owner. This practice is common throughout the country and has received recognition from courts of law as well.[34] In the eyes of law, the benamidar is the legal owner of the property standing in his name. Unless the assessing officers can prove that the person in whose name the property stands in the documents is not its real or beneficial owner, but only a benamidar for another person, it is not possible to consider the property for purposes of taxation, as belonging to the latter person viz. the real or beneficial owner. It is obviously very difficult for the assessing officers to expose the benami character of a transaction and to establish it beyond any doubt against the evidence of the legal document in assessee's favour. Thus benami transaction help exceedingly well to conceal the wealth and true income of a person and also for evading taxes.

Another important method of tax evasion is through the practice of 'blank transfers'. "In the blank transfer deed the seller only fills in his name and signature. Neither the buyer's name and signature nor the date of sale are filled in the transfer form. The advantage in giving such a blank deed is that the buyer will be at liberty either to sell it again without filling his name and signature to a subsequent buyer. In the latter case he can avoid the payment of the transfer stamp and a new deed to the buyer. The process of purchase and sale can be repeated any number of times with the blank deed and

ultimately when it reaches the hands of one who wants to retain the shares, he can fill in his name and date and get it registered in the company's books. For this ultimate transfer and registration, the first seller will be treated as the transferor, even if it happens years after his death. On such registration, the last buyer will be recognized as a shareholder by the company and the other intervening parties being not such shareholders but only having had an equitable right in themselves if they had so desired to be registered as shareholders of the company." It is the common method adopted for share transfers in speculative dealings in this country and all the stock Exchanges in the country recognize blank transfer as a valid delivery. It is a fact, however, that by means of these blank transfers dishonest assessees are able to conceal their income from the Tax Department and even if the concealments are detected and assessed, they can avoid the payment of the taxes as the shares are not registered in their names, and they cannot, therefore be attached and sold.

The division and distribution of the sources of income is also a widely used method for denying the State's share in tax. Under the Voluntary Disclosure Scheme of 1950-51 a lot of black money was declared by tax evaders in the name of their relatives to whom the money did not really belong.

On the basis of the annual Administration Reports of the Sales Tax Department, the Sales Tax Enquiry Committee (1957-58) appointed by the Government of Bombay listed some of the numerous devices resorted to for evasion of tax as under; (i) omission to report taxable turn-over; (ii) fraudulent changes in account books; (iii) maintenance of multiple sets of account books; (iv) opening of accounts under assumed names; (v) carrying out transactions in the names of dummies or figureheads; (vi) keeping transactions out of account books; and (vii) distorting the nature of transactions so as to conceal their true character. The keeping of different sets of account books, one for the trader, one for the Income-tax Department etc., has become a normal practice amongst our traders.

The wealthy section of the tax paying public use all their skill in evasion and avoidance of tax. They seem to prefer spending money on maintaining the services of lawyers, accountants, advisers and experts rather than paying to the State.

Causes of Evasion:

The motive for evasion of tax is, of course, wrongful gain through non-payment of tax due to the State. Many economists hold the view that the prevailing high rates of taxation is one of the main causes for tax evasion. The high rates of tax in the top income brackets are said to be tolerated only because of the considerable

evasion that takes place. On this point, the Direct Taxes Administration Enquiry Committee observe:"While we cannot deny that the higher the rate of tax, the greater will be the temptation for evasion and avoidance, we feel that the tax rates by themselves are not to blame for the large extent of evasion in the country. Even if the rates of tax are reduced, evasion will still continue, because it exists at all levels of income. The evidence before us shows that tax evasion has never been the prerogative of the higher income groups but, as the stakes involved are larger in their cases, the tendency to avoid or evade tax is also greater."

The complexity and ambiguity of tax laws, many provisions of which are not easily intelligible, are to some extent responsible for tax evasion and avoidance. Prof. Kaldor was of the view[36] that the income tax law was full of anomalies and loopholes offering the assessees opportunities for successful tax evasion. According to him, these loopholes were more evident in the elastic definition of allowable deductions particularly in the case of business income. Equally important factor in facilitating evasion is the complexity of modern business operations. Analysing the reasons for large-scale tax evasion, the first Five Year Plan rightly remarked[37]:

> "The fact that the corporate form of organisation is confined to a limited sector of business renders the problem of checking evasion difficult particularly in regard to trading operations. Even where the corporate form exists, the close interlocking of managerial and other controlling interests in the industry, trade and finance offers to the unscrupulous opportunities for evasion."

This leads us to another contributing factor - the shortage of experienced technical personnel to man the administration of tax laws. The delay in assessment proceedings is often utilised by unscrupulous tax-payers to manipulate their accounts, to destroy existing evidence or to fabricate new evidence - in short, to distort, the true position regarding their tax liabilities. In quite a few cases, the assets are alienated or frittered away during the interval between the earning of the income and its assessment, and even if ultimately a demand is raised, its collection is rendered very difficult. A huge backlog of income tax arrears amounting to Rs.271.71 crores was awaiting recovery at the end of March 1963! The Tyagi Committee therefore, observed that the time-lag in completing the assessments is itself one of the causes for evasion[38]. In this respect, it may be pointed out that the law, as it stands now, is highly loaded in favour of the tax evader. Tax assessment proceedings, at present, are unduly held up for long periods as a result of the interlocutory orders of High Courts exercising their writ jurisdiction. There were 528 writ applications pending before the Allahabad High Court against income tax assessments for more than two years. Even though ultimately these might be dismissed or decided against the private parties, the long delay involved, it is stated, itself acts to the detriment of the Public Exchequer. The collection of income-tax in Uttar Pradesh was round about Rs. 5 crores, while the arrears were Rs.20 crores[39]. Could it be said that "Law affords

protection to those who do not respect it?"

Lack of requisite integrity in some officers of the tax department and collusion of few others with the dishonest tax-payers also contribute to the prevalence of tax evasion.[40] Collusion with the tax-payer is not the only means available to a corrupt official for making unlawful gains. There are many avenues open to him such as intentional delays, with-holding on flimsy pretexts of benefits admissible in law, over-assessment and similar forms of harassment; in these and other ways a corrupt official can extort money from tax-payers with or without detriment to the revenues of the State. The Public Accounts Committee reported in their sixth report (Third Lok Sabha) as follows:[41]

> "The Committee are rather alarmed at such a large number of cases of under-assessment involving considerable amounts, detected in the test audit by the Comptroller and Auditor-General, when it is borne in mind that this scrutiny was limited to only a small percentage of cases in 235 income-tax wards out of 1,310 wards in the country. It is significant to note that the number of cases in which defects, discrepancies etc., involving under-assessment to the extent of Rs.120.77 lakhs were found, works out to about 16 per cent of the total number of cases audited (i.e. 13,357 cases)."

In the case of test-audit conducted during 1961-62, under-assessments of tax were noticed in 4,829 cases involving a tax of Rs.1.19 crores. Disclosing this information the Public Accounts Committee in its 21st report expressed concern over the fact that out of the 42,2843 cases in all examined in test audit, defects were

found in 8,604 cases which worked out to about 20 per cent. "What is worse", observed the Committee,[42] "1,062 cases out of these had already been checked by the internal audit of the department who had failed to detect these mistakes."

Deterrent punishments like imprisonments are not meted out to tax evaders when they are caught, even though the law provides for prosecution and imprisonment in cases of concealment and false statements in declarations. The Public Accounts Committee in its 21st report expressed surprise that while there were 4,511 cases in 1961 - '62 in which penalties were levied for concealment of income totalling Rs.7.13 crores not more than one person was sent up for prosecution.[43] The Tyagi Committee also came to the conclusion that[44] "the non-resort to prosecution and the non-levy of deterrent penalties have, no doubt, encouraged the growth of evasion." Though the maximum penalty leviable is 150 per cent of the tax sought to be evaded, such a high penalty is rarely levied, and even the moderate penalties imposed by the assessing officers are reduced by the appellate authorities to nominal amounts. With regard to the question of criminal prosecution of evaders, the Committee found the situation still worse, for, the Department could not get even a single person convicted in a court of law for an offence against the Income-tax Act during the ten years prior to the report. The Committee further added that "We feel that unless it is brought home to the potential tax evader that attempts at concealment will not only pay but

also actually land him in jail, there could be no effective check against evasion."[45]

Secrecy in respect of incomes and wealth can have only an anti-social effect. The practice of publishing names of tax payers with assessed incomes, which is already being followed in several countries, will be an effective check on tax evasion. Further, in as much as the pressure of public opinion is a major deterrent against any offence by the white collar group, publication of the names of those penalised for concealment of income, wealth etc., should be resorted to adequately and public conscience should be roused against tax evasion. The widely held feeling in the minds of the public that evasion pays and that evaders are treated lightly is definitely harmful. There is no reason why persons who have defrauded the State of large sums of revenue should be placed on a better footing than persons who have defrauded private parties.

•••••

CHAPTER FOUR

TAX EVASION AND AVOIDANCE

REFERENCES AND NOTES

1. Ambirayan, S., The Taxation of Corporate Income in India (1964), Asia, P. 181.

2. Report of the Direct Taxes Administration Enquiry Committee (Tyagi Committee) 1958-'59, pp. 2-3.

3. Mannheim H., Criminal Justice and Social Reconstruction (1949), P. 145.

4. Tyagi Committee Report, Supra, P. 147.

5. Haig, R.M., Encyclopaedia of Social Sciences, TAXATION, P. 535.

6. Hearings before the Joint Committee on Tax Evasion and Avoidance (1937), P. 2, Quoted in Tyagi Committee Report, Supra, P. 147.

7. In re Bai Sakinaboo, A.I.R. 1932 Bom. 116; In re Central Talkies Circuit, AIR 1941 Bom. 205; Devarajulu Co. Vs. I.T.C., A.I.R. 1950 Madras, 718; Meyyappa Vs. I.T.C., AIR 1951 Madras, 506; Ganga Sagar Vs. Emperor; AIR 1929 All., 919; Rajniti Vs. C.I.T., A.I.R. 1930 Patna 33.

8. Provident Investment Co. Vs. I.T.C., AIR 1954, Bom.95 at P. 97.

9. State of Bombay Vs. Automobile and Agricultural Industries Corporation, (1961) 12 S.T.C. 122 (S.C) Quoted in 29th Report of the Law Commission, Govt. of India. (February 1966) at P. 56.

10. This is evident from the fact of increasing amount of taxes being evaded year after year and the increasing quantum of penalties realized from the Assessees.

11. Sections 16, 30, 31, 42, 45 and 49 of the Finance Act, 1964 are important in this respect.

Section 16 enables the assessment of unexplained money; Section 30 confers powers of Search and Seizure on tax officers; Section 31 provides the power of survey; Section 42 provides for enhanced punishment by amending Section 278 of the Income Tax Act; Section 45 provides for publication of information respecting assessees and Section 49 provides for amendment of the Estate Duty Act, 1953.

12. The observations of Viscount Simon, L.C. in Latilla Vs. Inland Revenue Commissioners, (1943) A.C., 377 is noteworthy:

"My Lords, of recent years much ingenuity has been expended in certain quarters in attempting to devise methods of disposition of income by which those who were prepared to adopt them might enjoy the benefits of residence in this country while receiving the equivalent of such income, without sharing in the appropriate burden of British taxation. Judicial dicta may be cited which point out that, however elaborate and artificial such methods may be, those who adopt them are "entitled" to do so. There is, of course, no doubt that they are within their legal rights but that is no reason why their efforts, or those of the professional gentlemen who assist them in the matter, should be regarded as a commendable exercise of ingenuity or as a discharge of the duties of good citizenship. On the contrary, one result of such methods, if they succeeded, is of course, to increase pro tanto the load of tax on the shoulders of the great body of good citizens who do not desire or do not know how to adopt these manoeuvres."

13. Section 41, Finance Act, 1964 amending Section 277 of the Income Tax Act, 1961. The amended Section reads:

"If a person makes a statement in any verification under this Act or under any rule made thereunder or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be <u>punishable with rigorous imprisonment for a term which may extend to two years:</u>

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, such imprisonment shall not be for less than six months."

14. Section 40, Finance Act, 1964 amending Section 271 (1) of the Income Tax Act, 1961.

By this Section, an 'Explanation' is added to Section 271 of the Income Tax Act, besides omitting the word 'deliberately' from Cl.(c) of Section 271. The explanation reads: "Where the total income returned by any person is less than 80% of the total income as assessed under Section 143 or 144 or 147,..... such person shall, unless he proves that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income for the purposes of clause (c) of this sub-section."

15. Lok Sabha Debates on Finance Bill for 1964 - '65, March 1964.

16. Section 49 (1) of the Income Tax Act, 1952 (United Kingdom)

17. Tyagi Committee Report, Supra, pp. 167 - 169 at P.169

18. Mannheim, H., Criminal Justice and Social Reconstruction, Supra, pp. 150 - 152.

19. Tyagi Committee Report, Supra, P. 147.

20. Statesman, Delhi, dated September 8, 1964.

21. Kaldor, Indian Tax Reform (1956), Ministry of Finance, Govt. of India - Quoted in Tyagi Committee Report, Supra, P. 148.

22. Report of the Income Tax Investigation Commission 1949 pp. 79 - 83 - Quoted in Santhanam Committee Report, pp. 18 - 19.

23. Tyagi Committee Report, Supra, P. 148.

24. Report of the Committee on Prevention of Corruption (Santhanam Committee), 1964, P. 19.

25. Hindustan Times, Delhi, dt. April 11, 1964.

26. Ibid.

27. Report of the Income Tax Investigation Commission, 1949, P. 21.

28. A.I.C.C. Economic Review, Vol. XV, No. 18 dated February 25, 1964 at P. 9.

29. Mainstream, Delhi, Dt. July 13, 1963.

30. See, Economic Review, Supra, P. 9.

31. Report of the Commission of Inquiry on the Administration of Dalmia-Jain Companies (1963), Govt. of India, pp. 244 - 245.

32. Ibid. pp. 39 - 40.

33. Ibid. p. 33.

34. See Section 41, Transfer of Property Act: Kutteppan Nair Vs. Kuttisankaran Nair (1957) 2 M.L.J. 603.

35. Tyagi Committee Report, Supra, P. 149.

36. Nicholas Kaldor, Indian Tax Reform (1956) Supra, pp. 103 - 115; See in this respect the Final Report of the Bhoothalingam Committee on the Rationalisation and Simplification of the Tax Structure, Govt. of India(1968)

37. The First Five Year Plan.

38. Tyagi Committee Report, Supra, P. 149.

39. Civic Affairs, August 1957.

40. Santhanam Committee Report, Supra, P. [illegible].

41. Quoted in Santhanam Committee Report, Supra, P. 18.

42. Twenty First Report of the Public Accounts Committee.

43. Ibid.

44. Tyagi Committee Report, Supra, P. 150.

45. Ibid. P. 150.

••••••

CHAPTER - FIVE

ADULTERATION OF FOODS AND DRUGS

Part - A - Food Adulteration

One of the most widely-practised and most despicable of all white collar crimes in India is the adulteration of food-stuffs, drugs, medicines, cosmetics and other essential consumer commodities of daily use. The depredations of adulterators have never been so vile as they are today. Using the feeble and ineffective provisions of the food and drug laws as a smoke-screen, the profit-mad traders, manufacturers and businessmen have been systematically bombarding the people with falsehoods and half-truths about the purity, healthfulness, and safety of their products, while they have been making enormous profits by experimenting on the unsuspecting public with poisons, irritants, impurities, harmful chemical preservatives, and dangerous drugs. Their misdeeds bring death, disease and disability in their train to thousands of people, but they seem not to care so long as they get rich and make their pile. It has been estimated that from 25 per cent to 70 per cent of most of the food-stuffs consumed in this country are adulterated or contaminated.[1] Each year thousands of people are made seriously ill as a result of eating tainted or adulterated food. A still larger number suffer from malnutrition, functional weaknesses and infirmity reducing normal expectancy of life. Hundreds of people actually die every year of food poisoning and other associated ills.

Adulteration of food is a subject which has not attracted much public attention perhaps due to the fact that the evil effects of taking adulterated food are not so dramatic as an outbreak of cholera or plague. Hundreds of thousands of cases of food poisoning occur in this country without much public attention. Some of these prove fatal, some result in permanent disabilities and others cause slow poisoning with various physiological manifestations. A former Union Health Minister, Shri D.P. Karmarkar, in his inaugural address to the Hyderabad Seminar on "Prevention of Food Adulteration" in April 1958, had expressed the view that a murderer was more honest than a food adulterator. He had said that the murderer in any case was prepared to face the consequence of his action, but the food-adulterator having poisoned the food and having taken a good toll of lives, often escaped unpunished to continue his depredations against humanity. According to him food adulterators were "potential murderers and as such deserved the highest penalty". Similar view was also expressed by the former Union Home Minister, Mr. G.L. Nanda, when he inaugurated an exhibition of food adulteration in New Delhi (1965) organized by the Samyukta Sadachar Samiti. He had characterized food adulterators as "murderers" and "India's Enemy No.1".

Common Adulterants and Adulteration Techniques:

"Adulteration is the debasing of a commodity by admixture of foreign, inferior or harmful material or by reducing its grade below that which it is reported to be to the loss or disadvantage of the user, either in money or in service rendered".

Adulteration has now become a scientific and highly developed occupation. Recent scientific advances have played havoc in the hands of the unscrupulous food manufacturer and trader. Having created a certain degree of sophistication of food, these monied men of business are fraudulently attempting to increase the consumer's appeal by adding cheap, synthetic and prohibited colouring matters and flavours to make the food more attractive. They use poisonous and cheap preservatives and insecticides indiscriminately during storage of foodstuffs. Chemical substances of doubtful safety are added deliberately to disguise the food of its true nature. Apparent improvements in colour, taste and smell entice the consumer to buy adulterated articles.

From tests carried out in different parts of the country, the following are some of the important consumer items found adulterated in varying degrees ranging from 15 per cent to 80 per cent. The items are: Ghee, Rapeseed Oil, Mustard Oil, Coconut Oil, Spices, Tea, Washing Soaps, Pickles, Squashes, Common Salt, Wheat Flour, Gram Flour, Rice, Honey, Turmeric, Milk, Sugar Confectionery, Cosmetics, Ice Cream, Pulses, Eggs, Vinegar, Zeera, Hing, Paints, Cement, Coal, Charcoal, etc., etc. The adulterants used are those cheap substitutes which naturally give the price advantage to the trader or manufacturer as the case may be. They include sand and grit, chalk, papaya seeds, dried leaves, brick powder, blotting paper, saw dust, horse dung, poisonous chemicals, etc., etc.[2]

Dairy Products:

It has been found[3] that the percentage of adulteration is the highest in dairy products, particularly milk, butter and ghee. To quote a few instances, during the period 1955 - 59, the percentage of adulteration of milk in the State of Madras was 65 per cent and for the same period in Uttar Pradesh it was 30 per cent and in West Bengal 43 per cent. The percentage of adulteration of ghee and butter is also extremely high ranging from 10 per cent to 86 per cent. It is estimated that the average percentage of adulteration of ghee throughout the country is as high as 70 per cent! A sample survey conducted by the Directorate of Marketing and Inspections of the Ministry of Food and Agriculture based on 84 samples of ghee from 34 towns located in different parts of the country showed that 56 of these were adulterated with vegetable fat and 21 were of doubtful purity. Only eight were found free from adulteration, but almost all these had developed a rancid flavour[4].

Milk is adulterated with water and often with dirty water. Starch and Singhara are mixed with milk to disguise the water content and to cheat the consumer. It is common for buffalo milk to be sold as cow's milk after mixing water.

Blotting paper and corn flour are mixed with 'Khoya' and other milk preparations.

Ghee, which is clarified butter fat obtained from the milk of buffalo and cow is usually pro uced from surplus milk in villages. The composition of ghee varies according

to the type of animal, feed, area and types of production. The standards for dairy products prescribed under the Prevention of Food Adulteration Rules are made on a regional basis depending upon the type and breed of the cattle, and the feed given to it. The standards prescribed are minimum standards. Therefore, there is a possibility of adulterating the natural product during certain periods of the season when the standards of the genuine natural products are in excess to that prescribed under the Rules. As for example, the milk fat content in Buffalo's milk in Punjab has been reported to vary from six to nine per cent and, therefore, there is a margin of 3 per cent for the unscrupulous vendors to play about. Similar is the case with the standards prescribed for ghee. The R.M. value, which has been prescribed, is on the minimum side and in the same region it has been noticed that there is a natural variation in the RM value which gives sufficient scope to the dealer as well as to the trader to adulterate in the general market.

Ghee can be so skilfully adulterated with cheaper substitutes that "ad hoc" checking by taste, smell or appearance cannot really help in detecting the admixture. The following are some of the adulterants used for adulterating ghee and the methods employed for adulteration:[5]

(a) Hydrogenated Vegetable Oil:- This is mixed either at the finished stage when the ghee is being boiled for final collection or it is mixed with milk before it is boiled and converted to butter milk. In either case this adulterant mixes very freely and is difficult to identify

either by taste or by smell. On the contrary it improves its colour and the granular solidification.

(b) Refined Vegetable Oil:- Commonly the oil used is that of coconut which is mixed at either of the stages mentioned above. The other refined oil used is the peanut oil.

(c) Sweet Potatoes:- They are boiled and thoroughly minced. The stuff is thoroughly mixed with ghee before it is packed into containers.

(d) Animal Fat:- This is mixed at the final stage when ghee is under boiling.

(e) Fish Oil and Groundnut Oil:- These adulterants are mixed while curdling the milk. They have the additional advantage of reducing the acid content, thereby conforming the sample to specification laid down for testing.

Edible Oils:

Like ghee, edible oils like Rape Seed Oil, Coconut Oil, Gingiley Oil etc., widely used for cooking purposes, are also subjected to large scale adulteration. Mustard oil, for example, is made of nearly eight different varieties of cheap oil. Groundnut oil is converted into mustard oil by adding colour. Different mineral oils are freely mixed with some of the edible oils.

Spices:

Samples showed that in powdered chillies, powdered husk of rice, red clay, lead oxide, saw dust and maize flour coloured red are mixed. Curry powder is adulterated with

horse dung. Powdered horse dung has been reported to have been mixed with powdered corriander (Dhania). Besides, dhania and zeera are ground with dried grass. Roots and tubers coloured with lead chromate and metanial yellow and suitably flavoured are sold as genuine turmeric. Lead chromate which has a deep yellow colour is a poisonous derivative of lead. Dried seeds of papaya are mixed with black pepper. Hing is made out of a synthetic compound made out of bitumen.

Foreign leaves dried and dyed with bitumen extracts are used for tea adulteration. The old washed-out leaves treated with a blackish dye are also mixed with tea leaves.

Soft drinks made from chemical clouding agents like brominated fats, synthetic colours, flavours, sweetening agents and a little pulp from fruits are sold as genuine fruit juice. Vinegar is nothing but diluted acetic acid. Synthetic fluids with fragments of throw-away remnants of oranges and orange peals are used in making squashes. Tomato sauce is only pumpkin thoroughly meshed containing only a small part of tomato concentrate.

Common salt is abundantly mixed with chalk powder, soap-stones, stone powder and salt scrap. Saffron is mixed with flower petals, artificial coloured starch, paper giving artificial colour, leaves coloured with chicken blood and hair of maize cobs. Honey consists of sugar syrup and molasses.

Barfi and Kalakand, the well known sweetmeats,

have been found to contain blotting paper and corn flour. Maida is an open substitute for cheese in rasgoolas. Sugar confectionery is mixed with artificial coal-tar dye, atta and maida.

Washing soaps are adulterated with chalk, maida, soap stone and caustic soda sludge which is a waste product from the factories manufacturing vegetable oils.

Wheat flour is mixed with 'resultant' flour produced by the Mills, and chalk, barley flour, extraction of gluten, powdered bran etc. The adulterants used in the case of rice are white stone crushed to small grain size, clay and inferior quality old rice. Addition of metallic yellow to pulses of old stock is a very common dangerous practice.

What is sold as hen's egg in many cases is tortoise egg, duck egg, spoiled egg and fertilized egg.

Pan adulteration is also extensively practised. Date palm seeds are substituted for betel nut.

The above is only a small list of selected items where adulteration is found to have reached menacing proportions endangering the health of millions of people.[6] Some unscrupulous restaurant owners even indulge in still dangerous malpractices. They often use meat either from dead animals or birds or use discarded residues from meat-extract preparation and soups and try to mask this misdeed with strong flavour and hot spices. The adulterants used for food articles in

restaurants and halwai shops are so vast that it cannot be listed comprehensively. Many of the restaurants and eating establishments throughout the country serve unwholesome food and violate health laws repeatedly.[7]

A very serious menace to our health in the foods we eat results not from the preservatives or decomposition nor from the cheaper adulterants mixed with it but from the careless, insanitary handling of food products both in production and distribution. A measure of the almost universal lack of sanitation, which the public has a right to expect in food producing and distributing establishments can be studied by a random inspection of few bakeries, confectioneries, restaurants, meat markets, public eating places and slaughter houses. The combination of open garbage cans and dirty toilets at the rear of a hotel, flies and unprotected and ill-cooked foods therein constitute a serious menace to public health, even in shops which show outward evidence of cleanliness.

Poisonous Preservatives:

Another seriously dangerous practice is the use of toxic preservatives and insecticides for protecting food stuffs against damage by fungus and insects during storage.[8] Common insecticides like B.H.C. and other cumulative toxic substances are freely mixed with cereals and pulses to protect these from weevils and other insects; such dangerous practices can easily be avoided by fumigation with non-toxic and volatile ethylene oxide and bromides, but due to their

higher cost these are not used. Now the toxic insecticides also find their way into tinned foods like barley powder which has to be stored for long before consumption and their ill-effect on the children and on the sick can easily be imagined. Through the use of urethane and its derivatives to stop sprouting of potato during storage, the consumer can get a good dose of this potent carcinogen.

Lots of processing agents like poly-phosphates, cellulose esters, emulsifying and stabilizing agents of doubtful safety are used in the processed food at random.

Extent of Food Adulteration:

In India, prevention of Food Adulteration Act was enacted in 1954 with the intention of (a) protecting the public from harmful and poisonous foods, (b) preventing sale of sub-standard food containing harmful substances, and (c) protecting the consumer by eliminating deceitful and fraudulent practices. Though this Act is enacted by the Union Parliament, its implementation is a responsibility of the State Government who delegate the function to municipalities, corporations and other local bodies. Lack of proper laboratory facilities, shortage of qualified food inspectors and corruption in the administration combine to result in the inadequate enforcement of the Act. Many of the guilty who are brought to book escape punishment on some technical grounds or procedural lapses.[9] Even when convicted they are penalised for paltry sums which make the adulteration law a laughing stock among the culprits.[10]

The total number of food samples analysed under the Prevention of Food Adulteration Act in the country during 1960 is a little over 1,22,000 of which 37,837 samples were found adulterated indicating the percentage of adulteration as a little over 33 per cent. This figure refers only to samples sent for analysis. But th figure would go much higher on the basis of random sampling. The number of prosecutions launched in the year 1960 is 39,789 and number of convictions is 22,886. Total number of persons imprisoned is 601 and the amount of fines realised Rs.16,62,000. The statement that follows indicates the working of the Prevention of Food Adulteration Act, 1954 during the period 1955 - 1959:

TABLE II

WORKING OF THE PREVENTION OF FOOD ADULTERATION ACT

1st June, 1955 to 31st Dec. 1959

of food samples nt to the public alyst	No found adulterated	No of prose-cutions launched	No of convictions	No of acquitals including cases discharged	No.pending in courts	No imprisoned and fined	Amount of fine realised (Rs.)
64,251	[illegible]	[illegible]	17,[illegible]	895	6,147	247	5,66,604
29,972	6,[illegible]07	7,149	5,[illegible]	716	5,349	456	5,05,481
[illegible],416	[illegible]	3,319	884	39	593	7	57,609
2,[illegible]	[illegible],146	1,117	707	31	627	33	38,995
28,[illegible]	[illegible],674	9,29[illegible]	8,549	432	255	[illegible]2	69,248
2,951	[illegible],0[illegible]	57	45	1	13	..	2,[illegible]
1,995	[illegible],207	820	221	26	53	..	[illegible]
1,26,439	28,[illegible]	27,573	17,263	[illegible]54	3,778	91	13,[illegible],612
80,647	[illegible]	83,021	[illegible],370	[illegible]69	3,060	171	14,[illegible]
[illegible]6,164	4,[illegible]69	4,723	[illegible],452	[illegible]21	3,900	13	1,[illegible]
25,[illegible]	7,121	4,703	1,201	619	3,882	161	[illegible]
884	661	110	45	11	58	..	4,945

The following table published by the Calcutta Corporation Laboratory in 1961 gives the percentage of adulteration in that city of some of the main commodities of food, procured from different parts of the city on the basis of random sampling.[12]

T A B L E III

Food Commodities Found To Be Adulterated By Calcutta Corporation Laboratory in 1961

(Swasth Hind, March, 1963)

Commodity.	Percentage Adulterated.
1. Butter	74%
2. Spices	51%
3. Tea	48%
4. Milk	43.3%
5. Ghee	29.8%
6. Wheat (Atta)	20%
7. Mustard Oil	17.7%

In Delhi the results of the chemical analyses of various samples of foodstuffs revealed extensive adulteration of the whole range of food articles by harmful and poisonous ingredients, which lead to a slow poisoning of millions of consumers in the capital city of India. Following is the percentage of adulteration detected in some common food articles:-[13]

Salt - 30 to 50 per cent;
Khoya from U.P. - 75 per cent;
Milk - 30 per cent;
Ghee - 25 per cent;
Wheat flour - 25 per cent
Zeera - 75 per cent;
Hing - 75 per cent.

Reports from the various other State Public Health Laboratories show an equally high rate of adulteration of essential food articles. Though the number of prosecutions has increased considerably, the number of persons who finally get convicted is very few. Many a guilty person goes scot free because of some flaw in the taking and analysis of samples, in the presentation of the case before the courts, or because of the political influence or economic power of the offender or because of collusion of officials in the municipal administration. There are instances in Delhi where owners of eating establishments have been challaned 35 times but not convicted even once[14].

Factors Responsible For The Continuance Of The Menace Of Food Adulteration:

Among the many factors that encourage the increasing incidence of the evil of adulteration of food, the following are important:-

1) Weak and ineffective enforcement of the Prevention of Food Adulteration Act.

2) Lack of deterrent punishments actually awarded.

3) Inordinate lust for more and more profit on the part of the trader/manufacturer.

4) Socio-economic conditions in Society: general decline in moral values, corruption in public services, high prices due to scarcity conditions, cost-conscious consumers turning to 'cheaper substitutes' absence of organized consumer resistance etc.

5) Shortage of supply to meet the growing demand of food articles.

6) Paucity of qualified analysts, chemical laboratories etc.

Food, like water, is a primary necessity of life and supply of wholesome food, adequate in quantity and rich in nutritive value is an important factor in the prevention of disease. But, unfortunately in India, essential food articles have always been in short supply and the abominable practices like hoarding, black-marketing and profiteering on the part of the merchant community have further worsened the situation. The scarcity conditions, sometimes artificially created by the traders, coupled with the high cost of living have driven the vast mass of average Indians to satisfy themselves with adulterated food stuffs and cheaper substitutes. Finding quick means to make easy money the business community exploited the miseries of the people and devoted their ingenuity in adulterating the whole range of food articles with all sorts of harmful and poisonous adulterants that gave them the largest margin of profit. The damage to public health as a result of their criminal practices is incalculable.

It is indeed the realization of the widespread and persistent nature of the adulteration menace that is reflected in the provisions of the Prevention of Food Adulteration Act. The few provisions in the Indian Penal Code (sections 272-276) were found to be inadequate to meet the increasingly alarming situation[15] and it was thought the new Act would be an effective deterrent against food adulterators. But this measure also did not bring the desired relief to the nation. The provisions of the Act and the rules thereunder came to be more often violated than obeyed. Under the cover of its feeble provisions and taking full advantage of the extremely poor

enforcement of the Act the offenders continued in their nefarious activity endangering the health and security of more and more people. The rules under the Prevention of Food Adulteration Act provide only the minimum standards required of a commodity which itself gives a margin to the unscrupulous trader. The food inspector also generally requires an extreme degree of adulteration to merit condemnation. In these circumstances the law itself provided shelter to the unscrupulous trader to carry on his anti-social practices within certain limits sufficient to jeopardise public health.

Of late, though the number of samples tested and the number of prosecutions launched have shown an increase, the number of convictions has not increased proportionately. The attitude of the courts has also not been helpful in deterring the offenders. In many cases courts of law in exercising their discretion awarded minor punishments (though increased penalty was provided by Parliament) and more often than not, even these minor punishments were further reduced on appeal by the High Courts.[16] Added to this liberal judicial attitude towards the food adulterators there exists official corruption and political patronage[17] which help the "murderers by food" to violate the law and get away with it. The municipal authorities endowed with the responsibility of protecting the public from the menace of adulteration have been complaining about lack of funds and paucity of personnel. The average citizen is a helpless onlooker of this strange spectacle!

The need for strengthening the law and tightening its enforcement is very evident. The battle against adulteration calls for sustained effort backed by sustained public vigilance. The increased punishment and the certainty of a minimum term in jail provided by the amending Act of 1965 are yet to prove their efficacy in deterring persistent food adulterators. In this connection it is of interest to note the minutes of dissent[18] appended to the report of the Joint Committee of Parliament on the Prevention of Food Adulteration (Amendment) Bill, 1963, presented on 7th September 1964. Condemning food adulteration as the biggest crime against humanity, Shri P.K. Deo M.P suggested that even public flogging may not be adequate for this offence of deliberate genocide. M/s. H.V. Kamath and Niranjan Singh, M.Ps wanted the maximum penalty of death or imprisonment for life for major offences of adulteration. They also advocated the confiscation of assets, deprivation of civil rights including the franchise and disqualification from any public office, membership of legislature etc., in the case of habitual food adulterators. On August 7, 1964, the Calcutta Corporation unanimously recommended to the Central and State Governments that the death penalty be applied, both to adulterators and to profiteers.[19] The attitude of the public towards this type of criminality has also hardened and a majority of citizens advocate capital punishment to the offenders in this category.[20] They also recommend confiscation of property and, in all cases of conviction, wide publicity through the press, cinema and the radio. Despite such strong public sentiments against adulteration and successive amendments of the law

plugging the loopholes and increasing the severity of sentences, the evil has continued to grow endangering the lives of millions of people and putting the whole nation into shame.

Part - B - Drug Adulteration

When we examine the problem of adulteration in the field of life-saving drugs and medicines the picture is more distressing and appalling. In a vast under-developed country like India, where the majority of people are illiterate, under-fed, and economically backward, disease and disability are only the natural destinies of many Indians. According to a recent survey of the World Health Organization, malnutrition is almost an universal phenomenon in India. People do not get adequate supply of wholesome food with the result that they are easily prone to diseases. In such a situation the monied men of business who manufacture and sell spurious and sub-standard drugs and exploit the miseries of the people to satisfy their lust for profit are no better than the worst criminals. They not only cheat the innocent victims but play ducks and drakes with the lives of millions of people.

The clever and ingenious violations of modern drug makers and spurious drug manufacturers outmanoeuvre the provisions of the law of fraud and cheating. One apparently harmless practice is to set in motion a host of fears about their health and vitality in the minds of the people through clever, expertly-disguised publicity in the newspapers,

in the magazines, and over the radio. Then they recommend their products which, according to them, would avoid the onset of disease and give quick recovery from diseases already contacted. But the fact is that many of the drugs and medicines, including some of the most widely advertised and sold, are not only worthless, but are actually dangerous.

Some of the poisonous ingredients of their medicines act slowly and insidiously over a long period of years bringing the onset of old age and infirmity earlier than it would otherwise have come. Poisons in food and drugs lower the normal resistance power of individuals and bring many an obscure type of illness like indigestion, constipation, pains, head-aches, general weariness etc. In short, the drug fakers experiment on the public with their harmful products ignoring the consequences to the millions of human beings involved. As one American writer has put it;[21] "In the eyes of the law we are all guinea pigs, and any scoundrel who takes it into his head to enter the drug business can experiment on us. He may be uneducated, even feeble-minded. If he decides to become a manufacturer, it is his privilege to take down a dozen bottles from a shelf, mix their contents together, advertise the mixture as a remedy for indigestion, or asthma, or coughs and persuade us to buy it. The mixture may contain arsenic, carbolic acid and other deadly poisons. But, in most cases, he will have violated no law, indeed will not have offended the ethical sense of the average judge or legislator. When the experiment has failed and several of us have died, damage suits may make the business unprofitable

and so for the time being end it. But its owner may again take down the same dozen bottles and start over with a new name"!

The 'Unknown' Danger in Drugs and Cosmetics Trade:

Modern merchandising technique involves a large number of persuasive advertisements in a variety of subtle ways. Crores of rupees are spent annually to convince a credulous public that only in the cosmetics and hair preparations, toothpastes and antiseptics, tonics and vitamins lie security of health and happiness. Unfounded and imaginary fears are created in their minds that without those advertised articles, they will soon find themselves hairless and toothless and contact a host of infirmities and diseases the germs of which are lingering in their mouths, body and surroundings!

Millions of people in this country use almost every one of the well-advertised preparations, most of them of secret composition. Almost without exception, such preparations are of trifling worth for the galaxy of purposes for which they are advertised. According to expert medical opinion, the ordinary tooth-pastes widely advertised to have qualities of curing pyorrhea or mouth infections have nothing of such qualities and no tooth paste will destroy enough mouth organisms to make any difference in anyone's health or well-being. Those who rely on the manufacturer's/ advertiser's honesty and therapeutic knowledge will suffer

avoidable diseases and ailments. The makers of some of these popular preparations are guilty not only of poisoning the public mind with a stream of groundless fears which business enterprise can translate into money, but often of causing incalculable harm by the postponement of proper treatment in cases where serious conditions actually exist and demand treatment of unquestioned effectiveness. They further drain from slim purses of the common man the money needed for bread and other necessities of life.

Every large drug store has dozens of preparations carrying meaningless and misguiding names for the relief of headaches, pains and minor ailments of all sorts. For most people these preparations, unless taken in excess, are comparatively harmless. To a certain percentage who happen to be excessively sensitive to some ingredient, however, they are gross poisons and the concealment of the presence of these ingredients constitutes a grave danger.

Apart from the patients administering drugs to themselves and thereby complicating the disease conditions, self-medication resulting from over-emphasized and indiscriminate publicity has also an unfortunate repercussion of promoting drug addiction. The West Bengal Drug Enquiry Commission, alarmed at the rate of increase in drug addiction, cautioned the authorities of the health hazard and the malpractice involved in the process.[22] It is common knowledge that sedatives like barbiturates, stimulants like cocaine and tranquilizers are indiscriminately and surreptitiously being used by people without understanding the consequences.

Advertising has become the mainstay of sales of fraudulent and dangerous drugs, adulterated and sub-standard medicines and worthless cosmetics. Almost no advertising intended to influence the general public is honest in the sense that a true scientist understands honesty. What an advertiser says may be in a narrow and limited sense true, but he does not tell the whole truth. Ordinarily failure to tell the whole truth presents only an economic hazard or loss. In the advertising of medicines and drugs, however, such avoidance is definitely dangerous to the consumer. Many papers accept all sorts of advertisements, fraudulent an dangerous. In an important sense, therefore, the publishers of popular magazines and newspapers are more to be blamed than the advertising agencies for the continuance year after year of innumerable frauds. In India the problem assumes added significance in as much as many of the largely circulated newspapers and magazines are owned or controlled by those very businessmen who have interests in the industries connected with foods and drugs.

The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, is intended to regulate advertisements in respect of drugs, appliances, and magic remedies such as talismans, rings, amulets etc., which claim to cure or mitigate certain diseases and conditions specified in the Act, which require prompt treatment in consultation with qualified medical practitioners and where self-medication may aggravate the disease to a point when it may not be amenable to treatment. The object of the Act is therefore

to prevent the danger to public health from self-medication which may result from such advertisements which appeal to the credulity of the gullible lay public. The Act is administered by both the Central and State Governments. The Central Government regulates the import and export of objectionable advertisements while the State Governments exercise control over the publication of advertisements within their territories.

The enforcement of the Act by States is wholly inadequate. While objectionable advertisements relating to drugs are increasing at a tremendous pace, the progress of prosecutions[23] indicate the brutal indifference on the part of State authorities to curb the growing danger to public health. Excepting the State of Maharashtra, in all other States the administrative machinery required for the purpose is non-existent or ridiculously inadequate. There is practically no screening of advertisements and follow-up action on cases reported by other States are generally not taken. The West Bengal Drugs Enquiry Commission observed[24]: "Electric lamp posts and such other places are plastered with advertisements which offend the provisions of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. Some of the remedies advertised are really formulations for effecting abortion, but they are advertised as remedies for correction of irregular menstruation." The Commission analysed the existing legislations in the various advanced countries and formulated the following statutory prohibitions

in the control of drug advertisements:[25]

1) Self-medication of specified drugs;

2) Advocating self-medication;

3) Creating panic;

4) Recommending a remedy as infallible or possessing magic power;

5) Tendering free information for self-administration;

6) Issue of samples to the public;

7) Offering money back if treatment is unsuccessful;

8) Displaying medical certificates or testimonials;

9) Publishing letters of thanks; and

10) Describing symptoms of certain diseases.

The Indian Act, however, prohibits only advertisements of certain drugs for treatment of certain specified diseases and misleading advertisements relating to drugs. If the above prohibitions were to be applied to Indian advertisements appearing in the numerous journals, papers and other media in the various languages existing in the country, it would indicate the tremendous extent of danger posed to public health through such advertisements. Further technical advertising in India is not subject to any restriction, except that it has to be communicated to the registered medical practitioners or wholesale or retail chemists through confidential channel.

Drug Control in Historical Perspective:

India was largely dependent on foreign imports for drugs of modern medicine until after the First World War.

As a result of the unsettled conditions that followed the war there was a mushroom growth in Europe of unethical drug manufacturers who began to trade in faked and adulterated drugs with the East. During the years 1919-26, the Indian Market became flooded with adulterated, sub-standard, faked and spurious drugs. The absence of any organisation to control and check this menace added to the misery. The protests from the public to this open fraud led to the appointment of the Drugs Enquiry Committee in 1927. The Committee's findings also testified to the existence of widespread drug adulteration. The Committee observed[26]: "Owing to the unprotected condition of the Indian market, the facilities and the temptations for the sale of all kinds of inferior and deteriorated products are many and irresistable". Many foreign firms, which exported drugs to India, manufactured them specially for India, and exported drugs of a quality that were condemned by the authorities for their home consumption[27].

As a result of the report of the Drugs Enquiry Committee, 1927, the Government of India passed in 1940 the Drugs Act to regulate the manufacture, distribution, import and sale of drugs. Drug Rules were also framed in 1945 to serve the purposes of this Act. Under this Act, the Central Government controls only the standards of imported drugs while the State Governments control the manufacture, sale and distribution of drugs within the country by the establishment of an adequate machinery consisting of licensing authorities, inspectors and government analysts.

The institutional and legal framework provided under the Act was soon found to be wholly inadequate to meet the growing menace of spurious and adulterated, sub-standard, and misbranded drugs. According to the Pharmaceutical Enquiry Committee, 1954, the introduction of Drugs Act and Rules thereunder had not brought about the desired results in improving the quality of products manufactured and/or offered for sale in the country. "Through advertisement in the press and propaganda, tall claims are being made for useless preparations and the gullible public are being exploited".[28] While the market was getting flooded with products under fancy names of secret composition and without any guarantee of quality, and while complaints from the public become too frequent, the machinery required for the supervision of manufacture, distribution and sale of drugs remained largely inadequate, ill-equipped and neglected.

Extent of Adulteration in Drugs and the Factors Responsible Therefor:

For an appraisal of this aspect of the problem it is necessary to have an idea of the various definitions involved.

A drug (or pharmaceutical preparation) is any substance or mixture of substances manufactured, sold, offered for sale for treatment of disease.[29]

Adulterated drugs can be categorised spurious and/or sub-standard, whereas the term 'misbranded drug' as used and defined in the Drugs Act is a composite one. Sub-standard drug is the one which falls below the standard

set out in the schedule to the Drugs Act. The term "Standard" is with reference to quality. The term "misbranded" has reference to display.

Section 9(B) of the Drugs and Cosmetics Act, 1940 defines "adulterated drug" as under:

a) if it consists in whole or in part of any filthy, putrid or decomposed substance; or

b) if it has been prepared, packed or stored under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health or;

c) if its container is composed, in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or

d) if it bears or contains, for the purposes of colouring only, a colour other than as prescribed; or

e) if any substance has been (i) mixed or packed therewith so as to reduce its quality or strength; or (ii) substituted wholly or in part therefor.

The West Bengal Drugs Enquiry Commission (1964) defined "spurious drugs" as those which are deliberately adulterated and used the word "adulterated" to mean that, part of the ingredients of the drug has been taken out or substituted by products other than those specified.[30] Some drugs are entirely spurious; that is, they do not contain any of the ingredients declared in the brand; some are partly spurious in the sense that they do not contain the declared quantity and the specified quality of the ingredients. Sub-standard drugs can be: (a) drugs which have deteriorated because of indifferent storage, or where the shelf-life of

drug has expired and (b) drugs which are not upto the specified standard because of ineffective quality control at the various stages of manufacture which may be due to defects in the raw materials used or lack of proper laboratory facilities and technical expertise.[31]

Spurious drugs or drugs which are below standards are not only therapeutically ineffective, but can also jeopardize the life of a patient by allowing the disease to take a retrograde course by its not being checked in time.

There is no conceivable method to assess with any degree of certainty the extent of adulteration of drugs. People in the professions of medicine and pharmacy are in a position to know about it and a good section of them hold the evil as fairly widespread. The various Drugs and Pharmaceutical Enquiry Commission/Committees appointed by the Central Government and a few State Governments as well as the State Drug Control authorities also testify to the extensive prevalence of spurious and sub-standard drugs in the country.[32] From the findings in these reports as well as from the progress of prosecutions launched under the Drugs and Cosmetics Act 1940 and the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 one can gauge the magnitude of the problem, though the statistics indicate only a fraction of the violations. Table IV below indicates the progress of prosecutions under the Drugs and Cosmetics Act 1940 for the period 1959 - 63.

TABLE IV

Progress of Prosecutions Under the Drugs Act, 1940 During the Period 1959 - 1963

Heads of information.		1959 - 60.	1960 - 61.	1961-62.	1962-63.
1. Prosecutions launched	...	314	248	204	139
2. Cases decided	...	232	236	184	89
3. Acquittals	...	40	52	22	10
4. Convictions	...	192	184	162	79
5. Fines realized	...	Rs.28,024	Rs.34,440	Rs.23,911	Rs.30,178
6. No. of cases in which imprisonment awarded	...	17	5	7	3
7. No. of Prosecutions for sale and manufacture of spurious drugs.	...	-	42	30	61

* Based on Annual Report of the Central Drugs Control Administration, Ministry of Health, Government of India, 1965.

It is estimated that there are about 3,500 major, medium and small drug manufacturers in the country holding manufacturing licences. Most of them are concentrated in the States of Bengal and Bombay. Out of these, manufacturers having

a capital investment of more than Rs.10 lakhs number not more than 150. This means that the large bulk of phamaceutical products in the market comes from medium and small manufacturers. The quality control facilities at the disposal of such medium and small manufacturers are either deficient or absent. These mushroom units produce poor quality products under fancy names without any guarantee of quality.

According to the Pharmaceutical Enquiry Committee[33], the spurious drugs trade flourishes in India to a colossal extent due to several causes. First and foremost is the greed for making cheap money, taking advantage of the popularity of a drug by selling clever imitations as genuine products. The second cause is the tendency of the public to buy cheap drugs from unlicensed dealers like grocers and "walking chemists" who maintain no establishments according to the various laws. The third cause is the shortage of medicines of established reputation. This shortage may be real or artificial by hoarding large stocks. Another cause is the high retail price of certain drugs and medicines that are so much in demand due to their life-saving property. The Committee also attributed the existing inadequate legislation for this menace. The profit earned by the faker is so enormous compared to the punishment, imposed when convicted, that it is always an attractive proposition to manufacture spurious drugs. The inter-state barriers are exploited fully by the anti-social elements and where

sufficient understanding and liaison does not exist between the Drug Control Administrations of different States, maximum use is made by the parties to dump such products on to neighbouring States. The facilities for the testing of drugs at the disposal of drug control organizations are also generally poor and the procedure cumbersome adding to the advantage of the unscrupulous manufacturer. The Government's purchase policy for military and civil hospitals is also held to be responsible for the manufacture of sub-standard drugs. When purchases are made on a tender basis without caring to ensure proper quality, it is no wonder that sub-standard products are bought by the Government and their manufacture is encouraged.[34]

In 1962 a large number of complaints from different parts of the country were received regarding the quality of distilled water for injection manufactured by certain firms in West Bengal. Similar compalints again appeared in respect of the following drugs: (1) Aminophyllin (2) Glucose and (3) Atropine - also believed to be manufactured by West Bengal Firms.[35] On tests these were found to be sub-standard and unfit for use. Large stocks of these products were seized and destroyed by the Drug Control Administration in Maharashtra, Mysore and Kerala. Reports came in from different quarters that there are large number of manufacturing concerns in West Bengal producing sub-standard and spurious drugs and marketing in other parts of the country. In the face of these allegations the West Bengal Government constituted a Commission of Enquiry to probe, among other things, adulteration of drugs.

The Commission's findings and the evidence given before it by witnesses on the extent of 'malpractices' in the drug trade are shocking.[36] Experienced criminals manufacturing spurious drugs from factories located in unknown places are aided by medical practitioners, financiers and technical experts. Dealers in different area in collusion with the manufacturers sell the spurious drugs. A few manufacturers have also built up an extensive and lucrative business in the sale of formulations containing ingredients of the British Pharmacopoeia under Unani or Ayurvedic names.[37]

The Drugs and Equipment Standards Committee constituted by the Central Government was specifically asked to assess the extent of spurious as also of sub-standard drugs in the market. The Committee issued detailed questionnaires to medical and pharmaceutical associations, hospitals, manufacturers and State Drug Control authorities asking them to furnish details on the manufacture and sale of spurious drugs known to them. The Committee could not draw any positive conclusion on the extent of spurious drugs on the basis of the replies received as it felt the information to be inadequate. Nonetheless, the available data indicated the prevalence of spurious drugs in the market "though not of a considereble magnitude". However, it was reported by the State Drug Control authorities that quite a number of cases of spurious drugs under the following categories were detected:[39]

(a) Drugs whose labels show them to be manufactured by firms which are non-existent.

(b) A drug which is a close colourable imitation of a well-established brand of drug.

(c) A drug which is found to be different from what is claimed on the label.

(d) A drug which is manufactured by a party other than the manufacturer shown on the label.

On the question of sub-standard drugs, the Committee noticed that about 20 per cent of the samples were reported to be not of standard quality.[40] Vitamin preparations constitute the major component among the sub-standard drugs. A detailed statement showing the total number of samples of drugs analysed during 1959 to 1964 in the country, samples found standard and number of samples found to be not of standard quality during these five years is given in Table V.

TABLE V

Statement showing the total number of samples analysed, number of samples found standard and number of samples found to be not of standard quality during 1959 - 64 as reported by the State Drugs Control Authorities.

S.No.	1959-60	1960-61	1961-62	1962-63	1963-64
1. Total No. of samples analysed.	4911	5358	5383	5233	4882
2. Samples reported standard	3822	4317	4455	3883	4028
3. Samples reported to be not of standard quality.	1091	1041	928	1350	854
4. Percentage of samples reported to be not of standard quality.	22.22%	19.43%	17.24%	25.8%	17.5%

TABLE V * Source: Report of the Drugs and Equipment Standards Committee, 1965, pp. 86 - 89.

Some unscrupulous manufacturers, the Committee found, have been taking advantage of the prohibition scheme prevailing in most of the states and have been marketing alcoholic preparations and medicinal tinctures.

The menace of sub-standard drugs is even more serious than that of spurious drugs as the former, often products of fairly well-known firms, are more difficult to detect. Often the potency of drugs found sub-standard is only half of what is claimed on the label and sometimes as low as merely 10 per cent of what is expected. There have been instances of sub-standard injectibles which not only failed to have the desired curative effect on the patients but proved positively harmful.

According to reports of the Central Drug Control Organization[41], there is a certain quantity which is sub-standard in imported drugs as well. Control over the quality of imported drugs is exercised by the Central Government through its officers at the ports of Bombay, Madras, Calcutta and Cochin. On an average 6 to 12 per cent of the samples examined are found to be below standard. Contravention of labelling provisions and cases of date-expired drugs are also detected in a number of cases of imported drugs.

The evidence unmistakably indicates the persistence of the racket in sub-standard and spurious drugs. The drugs control machinery remains weak and faulty. The

punishments awarded to drug fakers are far from deterrent. The unwary and the gullible public fall easy prey to the machinations of the unscrupulous section of the industry and trade and it is impossible to assess the extent of damage thereby caused. Furthermore the practice of adulteration of drugs strikes at the very root of scientific medical practice and thereby indirectly helps the development of quackery and charlatanism.

•••••

CHAPTER - FIVE

ADULTERATION OF FOOD AND DRUGS

REFERENCES AND NOTES

1. SWASTH HIND, Ministry of Health, Government of India, March, 1963.

2. Swasth Hind, Supra, December 1964, pp.57-58; Also see 'Statesman' (Delhi) dt. October 3, 1964.

3. Dr. Subra Moniyan Y.K., Legal Standards for Dairy Products in India, Swasth Hind, Supra, December 1962.

4. Protection Against Adulteration in Ghee, Modern Review (Calcutta), September 1969, pp. 223-224.

5. Malhotra G.L., Food Adulteration - A Menace, Social Welfare, Publications Division, Govt. of India, December 1964, p. 58.

6. Malhotra, G.L., The Hardships of a Consumer, National Consumer Service, Central Bharat Sewak Samaj, N. Delhi, pp. 4-5; Also see Dr. M. Sen and Dr.P. Dutta, Dangers of Food Adulteration, Swasth Hind, March 1963; And 'Statesman' (Delhi) dt. October 3, 1964.

7. Statesman (Delhi), December 6, 1964.

8. Swasth Hind, March 1963.

9. Prosecutions may fail because of defective reports of the public analysts (e.g., the cases cited in State vs. Gunjlal, A.J.R. 1964 Punj. 475), or delay in the examination of samples (Municipal Corporation of Delhi vs. Surja Ram, 1965, 2 Cr.L.J. 571), or because the latest rules not brought to the notice of the Court (Mela Singh vs. State, A.I.R. 1964 Punj. 332) or because the procedure prescribed by the Act for taking samples is not followed. (Food Inspector vs. P. Kannan, A.I.R. 1964 Kerala 261) - See comment on Twenty-ninth Report of the Law Commission of India (Feb. 1966) at p. 72.

10. Hindustan Times (Delhi) dt. May 31, 1963.

11. Swasth Hind, Supra, March 1963.

12. Ibid.

13. Hindustan Times (Delhi) dt. March 28, 1963.

14. Statesman (Delhi) dt. December 6, 1964.

15. See - Statement of Objects and Reasons - Prevention of Food Adulteration Bill, Gazette of India (1950), Part II, page 522.

16. Hindustan Times (Delhi) dt. May 31, 1963.

17. In their minutes of dissent appended to the Report of the Joint Select Committee of Parliament on the prevention of Food Adulteration (Amendment) Bill, 1963 M/s. H.V. Kamath and Niranjan Singh, M.Ps found "the soft attitude, bordering on connivance, of certain high-ups in the ruling party and Government, who have covert if not overt links with some top-notch producers and traders who tamper with the people's food for personal profit" responsible for the continuance of the evil of adulteration - Dissent to the report.

18. Ibid, Minutes of Dissent

19. Statesman (Delhi) dt. August 19, 1964.

20. Refer to the findings of the opinion poll on public attitude towards white collar crimes, chapter VIII, infra; Also see the 29th Report of the Law Commission, Supra, p.71.

21. Arthur Kallet and F.J. Schlink, 100,000,000 Guinea Pigs, N.Y. (1935), Chapter I.

22. Report of the Drugs Enquiry Commission, Dept. of Health, Govt. of West Bengal (1964), p. 116.

23. In 1961 - '62 and 1962 - '63 the total number of prosecutions launched throughout India under the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 is merely 13 and 17 respectively - See Report of the Ministry of Health, Govt. of India for 1961-'63, pp. 88-89.

24. Report of the West Bengal Drugs Enquiry Commission, Supra, p. 86.

25. Ibid. p. 88.

26. Quoted in the Report of the Pharmaceutical Enquiry Committee, Ministry of Commerce and Industry, Govt. of India (1954), pp. 146 - 147; Also see Report of the West Bengal Drugs Enquiry Commission, Supra, p. 77.

27. West Bengal Drugs Enquiry Commission Report, p. 77-78.

28. Report of the Pharmaceutical Enquiry Committee, Supra, p.9.

29. World Health Organization Technical Report No. 138, Geneva (1957) p. 14.

30. West Bengal Drugs Committee Report, Supra, p. 81 and p.112.

31. Ibid.

32. The Drugs Enquiry Committee, 1930; The Pharmaceutical Enquiry Committee, 1954; The Committee on Drug Control (Borkar Committee); The Drugs and Equipments Standard Committee, 1965; The West Bengal Drugs Enquiry Commission, 1954 etc.

33. Pharmaceutical Enquiry Committee Report, Supra, pp.160-163.

34. Ibid.

35. Statesman (Calcutta) July 27, 1962.

36. West Bengal Drugs Enquiry Commission Report, supra, pp. 112-121.

37. Ibid.

38. Report of the Drugs and Equipment Standards Committee (1965) Ministry of Health, Govt. of India, pp. 3 - 4.

39. Ibid.

40. Ibid., p. 85.

41. Report of the Ministry of Health, Govt. of India for the years 1961 - 63, pp. 6 - 7.

•••••

CHAPTER SIX

WHITE COLLAR CRIME IN GOVERNMENT AND POLITICS

Criminal behaviour in the sphere of Government and politics generally manifests itself in corruption, bribery, nepotism, gerrymandering, maladministration, criminal misconduct, misappropriation of public property, criminal breach of trust, election offences and the like. The menace of political corruption, graft and public dishonesty has assumed serious proportions today. It has demoralized public life and administration to a degree in which much of it is not even noticed. It appears to have become an integral part of the political system of every democratic country, particularly of the newly independent and developing countries like India. There is, of course, an increasing realization in our country of the dangerous potentialities of this situation and the need for countering it at all levels in the administration and public life. A significant manifestation of the growing awareness of this evil is the extensive discussion on corruption that we get today in Parliament, in press, and on public platforms. However, this has not taken us too far, excepting to tarnish the public image of our country and our national character in foreign minds.

There is indeed so much of talk about corruption today that it has become difficult to appraise what has been happening. A dispassionate and objective assessment of the problem requires a clear perspective. This is what is attempted

in the following few pages of this chapter.

Corruption in Historical Perspective:

Corruption in Government and politics is certainly no recent innovation. The evil has been there in all societies in varying degrees. No epoch in human history has been free from it; no country either.[1] It is thus essentially a human problem which has existed from the dawn of history in all countries and climes. According to the opportunities provided by the political set-up, the economic arrangements, and the psychological drives in the contemporary cultural milieu, corruption has only varied in its degree and intensity.[2]

It is common-place to suggest that the present state of corruption in India is a British legacy. Though there is some truth in it, to put the blame squarely on the maladministration of the British would only show ignorance of Indian political history prior to 1600. Kautilya, the celebrated Indian writer on economics and statecraft, referred in his writings to the various forms of corruption prevalent in his times in ancient India and advised the king to be eternally vigilant.[3] Historical records, official reports, personal memoires and independent studies have abundantly exposed the existence of the evil in varying degrees in medieval and pre-British period.[4] The East India Company Administration and the British regime kept intact and even encouraged many evils of the feudal society including the extortion of illicit tolls by the privileged classes.

While the British officials were paid high salaries, the vast army of lower officials consisting of the loyal native people were maintained at a pitilessly poor economic level. The rulers took it for granted that these people would supplement their poor legitimate income with illicit tolls. People were employed on the strength of loyalty to the regime and the newly-created native middle classes were allowed to indulge freely in all sorts of malpractices so long as law and order situation was not disturbed. The colonial rulers were only concerned with the collection of taxes and maintenance of 'order' and they were least interested in providing a clean administration. For decades the practice has been to employ people solely on the strength of loyalty to the regime thereby putting a high premium on nepotism, dishonesty and sychophancy. It is therefore not surprising that on achieving independence the country inherited the legacy of a corrupt administration particularly in its lower echelons.

However, there are many reasons why the problem of corruption has become the cause of national anxiety in India today. Problem of this type generate public criticism only when the people are aware of its social consequences. Modern press, political parties and other institutions of mass communication have systematically exposed corruption and educated the public mind. The spread of education, improvement in the methods of social communication and increasing public participation in the political processes accelerated this trend. Corruption is news today and there

are more critics than ever before. A wrong which might have been endured a few decades ago as something inevitable or not worth bothering about, would no longer be accepted today with the same fatalistic submission.

Together with this change in public psychology, the activities of the Government have also increased particularly in the sphere of welfare schemes that yielded ever new opportunities for corruption and graft. There are now many agencies of Government dispensing huge sums of money through contracts, subsidies and loans which either did not exist or were relatively unimportant many years ago. Today more people are handling larger public funds than ever before in our political history. The rapid industrial development and general economic growth under a system of governmental control have placed in the hands of officials and politicians a power which can be used to public advantage or disadvantage as the actual holders of it wish. Whenever this power has been abused, or not used for public benefit, the reaction of the people is now sharp and swift.

It is, however, unfortunate that the problem of corruption is so often identified with Government and politics whereas they represent only part of the general degredation in public life. Dishonesty, lack of integrity, unscrupulousness and moral indifference are at a high premium in present day society. Corruption exists in business, labour, the "noble" professions like law, medicine and education and amongst general public. We cannot therefore isolate the evil and

diagnose in one particular context only because it is the common consequence of the larger process of social disease and disorganization.

It is equally unfortunate that the existence of the evil of corruption in public administration should be a matter for political exploitation and unwarranted and ill-conceived generalizations. It is necessary in the first instance that the problem be divorced from political polemics. Accusation of corruption being flung at others merely out of political and personal motives is a diabolical pastime of some of our politicians[5]. Mischievous exaggeration and unprincipled publicity to the problem of corruption give a poor image of our otherwise 'stable administration' to the world at large. This is certainly detrimental to the interests of a developing democratic country. Likewise, men who are disgusted with the present are apt to picture the past as a golden age in which citizens were virtuous and public officials impeccable. Such an attitude is of no practical value and such people are doing a distinct disservice to our infant democracy. It only creates confusion and discontent in the minds of men eventually eating away their faith and confidence in themselves. It must also be said here that the obstinate refusal to investigate charges of corruption by men in authority out of a 'political defense complex' is not worthy of our political leaders. It undermines public confidence in the administration so essential to the growth of democracy and the rule of law. The problem is national and a corrupt public servant or a dishonest politician,

whatever his position or party, is an enemy of the people and deserves no sympathy. It is in this perspective the problem is examined here.

Importance of the Problem in Contemporary India:

Corruption in public administration effects each one of us in some way or the other. Today it is said to be difficult to get a licence, a permit, or even a third class railway berth without paying 'extra' for it. There is bribery in connection with the purchase of supplies, the making of contracts, the enforcement of regulations, the enactment of legislation and even the administration of justice. There have been instances of corruption among Ministers (e.g., Report of the Commission of Inquiry against Pratap Singh Kairon, the Chief Minister of Punjab, 1964; Shiv Bahadur Singh Vs. State of Vindhya Pradesh, 1954 Cr. L.J. S.C. 910), highly placed public servants (e.g., S.A.Venkataraman Vs. The State, 1958 Cr.L.J.258; State of West Bengal Vs. S.K.Ghosh, 1963 (1) Cr.L.J.252 - both members of the Indian Civil Service; C.S.D.Swami, Director of Fertilizers, Govt. of India Vs. The State, 1960 Cr.L.J., S.C. 131; Major E.G. Barsay - Chief Ordnance Officer Vs. State of Bombay, 1961 (2) Cr.L.J.828; Major H.H.B.Gill Vs. The King, 49 Cr.L.J.503, P.C.; M.M.Gandhi Executive Engineer Vs. State of Mysore, 1960 Cr.L.J.934; State of Madras Vs. Vaidyanatha Iyer - Income Tax Officer, 1958 Cr.L.J., S.C. 232) and even amongst judicial officers (e.g., Harendra C. Barori Vs. Emperor, 48 Cr.L.J. 118; State Vs. Pundlik, 1959 Cr.L.J. 1421; Keshavlal Vs.State of

Bombay, 1961 (2) Cr. L.J. S.C. 571). The annual reports of the Special Police Establishment (Delhi) contain the large number of prosecutions launched every year against gazetted and non-gazetted officers.[6]

The influence of corruption is insidious. It not only inflicts wrongs which are difficult to redress but it undermines the structure of the administration and confidence of the public in the administration. Unless it is effectively checked, the country shall have to pay dearly for it, because good administration is necessary not only for the healthy growth of our economy but also for preserving our freedom.

In his Republic Day message to the nation in January 1967, President Dr. S. Radhakrishnan expressed concern at the widespread prevalence of the evil and added that "Unless we destroy corruption in high places, root out every trace of nepotism, love of power, profiteering and blackmarketing which have spoiled the good fame of this great country in recent times, we will not be able to raise the standards of efficiency in administration as well as in the production and distribution of the goods of life". There must, therefore, be a continuous war against every species of corruption within the administration as well as in public life. There should be a systematic probe to gauge its causes, its extent and magnitude, as well as to evolve effective remedial and preventive steps to root out this evil.

Corruption and maladministration impose a great strain on democracy and rule of law. The smouldering discontent, frustration and cynicism often come to the surface in the form of revolutions. In fact corruption among the ruling classes have always led in many countries in the past to political upheavals and military dictatorships. The problem therefore demands urgent and vigorous attention from all concerned. For these reasons, white collar criminality in public administration is discussed in the following pages as comprehensively as possible.

Nature, Definition and Scope of Corruption:

The giving and taking of bribes as a crime is the outcome of civilized legal systems[7]. In primitive societies payment for favours shown was the rule. Prior to and even during the Anglo-Saxon period in England the judges were expected to take payment from the parties and its abuse led to 'sale of Justice' to the highest bidder. It was only with the progress of civilization that this system with its built-in corruption was found to be reprehensible and was eventually replaced by a system of payment from the State to Judges and officials[8].

The modern conception of integrity of public servants in the sense that they should not use their official position and status to obtain any kind of financial or other advantage for themselves, their relatives or friends is due to the development of the rule of law and the evolution of a large permanent public service cadre. Levy of taxation

by law, parliamentary control of expenditure, and the regulation of conduct of public servants by rules, the breach of which would subject them to penalties including dismissal and prosecution in courts, contributed to the present notion of integrity of public servants. The fact that fair, honest and just principles are declared and adopted in matters like recruitment, promotions and other conditions of service, has further encouraged the growth of the currently accepted standards of integrity.[9]

The expression "corruption" in its narrower application is confined to pecuniary benefits or bribes but, in its wider sense covers a host of vices attributable to influences - political, personal, communal, linguistic, regional and others. Corruption is a wider term than bribery and embraces all forms of dishonest gains in cash, kind or position, by public servants, businessmen or the common people. "Bribery" usually means the taking by a public servant of gratification other than legal remuneration for the performance of an official duty. A bribe is described by the great lexicographer, Webster, as a price, reward, gift or favour bestowed or promised with a view to pervert the judgment or corrupt the conduct of a judge, witness, voter or other person in a position of trust. The problem which has acquired topical piquancy is not merely corruption in its legal form hedged in by technical pleas and loopholes but also in its moral, political and other aspects. The issue before the nation is larger, subtler, more varied and complex than presents itself in the law courts.[10]

Chapter IX (Sections 161 - 171) of the Indian Penal Code discusses offences by or relating to public servants. The most common form of corruption - public servant taking gratification other than legal remuneration in respect of an official act - is stated in Section 161 of the Code:

> "161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the central or any State Government or Parliament or the Legislature of any State or with any local authority, Corporation or Government Company referred to in Section 21, or with any public servant, as such shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both".

In other words, any act of commission or omission by a public servant for securing pecuniary or other material advantage directly or indirectly for himself, his family, relatives or friends constitutes the criminal offence of corruption. Again Section 165 of the Code punishes public servants obtaining valuable thing, without consideration, from persons concerned in proceeding or business transacted by such public servants. Section 165 reads:

> "165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he

knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate,

or from any person whom he knows to be interested in or related to the person so concerned,

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Apart from the above provisions of the Indian Penal Code, there are many other legislations for prevention of corruption in India. The prevention of Corruption Act, 1947, is intended to make more effective provisions for the prevention of bribery and corruption. Section 5(1) of the said Act provides the offence of criminal misconduct in discharge of official duty.

"5.(1) A public servant is said to commit the offence of criminal misconduct -

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in Section 161 of the Indian Penal Code, or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do, or

(d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage, or

(e) if he or any person on his behalf is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year."

Certain acts in connection with elections are treated as corrupt practices under Section 123 of the Representation of the People Act, 1950 and most of them are also offences punishable under the Indian Penal Code[11], whether they are committed by the candidate or any other person. The corrupt practices according to Section 123 of the Representation of the People Act, 1950 are:

(i) Bribery

(ii) Undue influence

(iii) Appeals to vote or refrain from voting on the grounds of religion, race, caste, community or language or the use of, or appeal to religious or national symbols.

(iv) Promotion or attempt to promote enmity between classes.

(v) Publication of false statements as to personal character or conduct or candidature of candidates.

(vi) Hiring or procuring of vehicles for the conveyance of electors to or from polling stations.

(vii) Incurring or authorising of expenditure in contravention of Section 77 of the R.P. Act.

(viii) Obtaining or procuring the assistance of persons in Government service.

In the above list of corrupt practices, bribery, undue influence, publication of false statements, illegal election payments and failure to keep election accounts are also punishable as offences under the Indian Penal Code.[12] The offence of bribery is committed under the Code when a person gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right.[13]

However, the above definitions do not exhaust all the various manifestations of the evil of corruption and bribery that are found in the ever increasing complexities of modern society. Graft and nepotism, direct or devious, are also evils akin to bribery. Graft is a poisonous form of political corruption and involves the abuse of power in dealing with the resources of the Government in the interests

of private profit. It often assumes the shape of patronage or influence based on communalism, sectarianism, nepotism and favouritism. It indicates the absence of intellectual honesty - a desire to reach decision on merits alone unaffected by personal prejudices. It results in maladministration - a fertile source for corruption and such other illegal practices.

Corruption is thus as much a social problem as it is a legal one. Many an undesirable and anti-social practice which may not strictly be called corruption in the technical sense may carry the element of blameworthiness and social opprobrium to a similar or even greater extent. Some may say that there is corruption only when a bribe is received, either financial or otherwise. Others may argue from a strictly legalistic standpoint and ignore the insidious forms of the evil. "Such a narrowing down of improper conduct", according to one writer on the subject,[14] "is to compromise with many forms of insidious evil, where motivations may not be a direct or indirect financial benefit to oneself. The love of power, the fear of losing a job, the fear of incurring the displeasure of powerful groups, the desire to avoid unpleasantness or painful intellectual effort are all equally strong motive forces, as in the love of lucre. Corruption implies moral deterioration in any form, whatever may be the causative factors or the temptations. As a nation we must get away from the mood of compromising with evil or glossing over its existence, as that too is a form of corruption." Though this is too extreme a view to

be of use for practical purposes, it is to be admitted that any meaningful study of corruption should have a wider basis than the strict legal interpretation would permit. The problem is therefore discussed here in its wider connotation.

General Causes of Corruption:

Like every other anti-social behaviour, corruption too has its roots in the socio-economic conditions and cultural milieu of contemporary society. Though the immediate causes of corruption in particular cases may vary, yet a sociologist can discern a set of fundamental factors that encourage or discourage illegal practices in public life of a given community. These factors may be conveniently studied under the following heads:

i) Historical
ii) Environmental
iii) Economic
iv) Functional and
v) Sociological

1. Historical Causes:

In countries of Asia and Africa, newly liberated from centuries of British or French rule, the problem of corruption has roots deep in the past. In India, the colonial Powers took pride in deliberately letting the privileged middle classes to extort illicit tolls from the public to make good their otherwise poor legitimate income.[16]

The two World Wars had created conditions which not only made money-making easy but placed great temptation before officials charged with the granting of permits, licences, quotas etc. The climate in the bureaucracy had been rendered unhealthy by the war-time controls and scarcities, the post-war flush of money, and the consequent inflation.[16]

After Independence, the sudden extension of the economic activities of the Government with a large armoury of regulations and controls administered by inexperienced officials and power-hungry politicians made the situation still worse. The quest for power, economic or political, emphasized the successful achievement of the objective more important than the means adopted to achieve it. The deterioration in ethical standards, which had set in, was not promptly arrested after the country achieved independence. As the Santhanam Committee had observed,[17] complaints against the highly-placed in public life were not dealt with in the manner that they should have been dealt with if public confidence had to be restored. Weakness and pusillanimity in this respect created cynicism and the growth of the belief that while Governments were against corruption they were not against corrupt individuals, if such individuals had the requisite amount of power and influence.

Independent India with an under-developed economy and a vast mass of illiterate and politically inexperienced people had to solve grave problems of gigantic immensity at a relatively fast rate. In the process there

has come about a certain amount of weakening of the old integrated system of administration and dissolution of public virtues without being replaced by any effective system of values and principles. Social controls of an essentially agrarian society were weakened and forces of materialism, impersonalism, group loyalties, and status based on economic power have emerged in the semi-urbanized Indian Society. Despite many fundamental changes in the social, economic and political spheres, no fundamental re-orientation of the administrative services was effected. The assumption of new responsibilities by the Government necessitated rapid promotions including those of some unproven men. Recruitment of a large number of officers in public services inevitably caused a dilution of experience and ability. Instead of cleaning up the administration of corrupt elements, praise was lavished upon the services by the political bosses even when there was no occasion for it. It was thought by responsible men in authority that the higher levels of officialdom were completely free from corruption and even in lower ranks it was negligible.[18] The result of such a policy was the further aggravation of the malady already widespread.

2. Environmental Causes:

Corruption cannot be explained solely by the presence of certain dishonest officials in the administration. The increasing break-down of morals and integrity and the rapid disintegration of social relationship under the impact of industrial civilization have influenced the public services as well. Material possessions and economic power are now

recognized as determining a person's status in society. Corruption has become such a large-scale racket because of the tendency in society to honour men of wealth irrespective of the fraudulent ways they achieved it. A society that does not attach any stigma to the corrupt man can hardly be rid of such ignoble men. People will now bribe and accept bribes to get additional wealth and the status and recognition that come with it. As one writer has recently pointed out,[19] "Those who have tried to live as moral men in an immoral society have generally given away, sooner or later, under agonizing pressures of legitimate ambition which can only be achieved through illegitimate means - the pressure from family obligations, the slow insidious pressures of a society in which material success is adulated and where material failure is ruthlessly mocked, the pressure of increasing defeatism, or realization that public opinion stigmatizes the transgressor so lightly, and that so little seems to be gained by trying to swim against the tide."

One can notice two aspects of the problem of corruption prevailing in India today. One is the inevitable corruption that is built into an economy of scarcity and controls. The other kind of corruption that has traditionally become part of the bureaucracy partly stems from the temptations thrown in the path of ill-paid Government employees struggling to make the two ends meet. It was to be admitted that corruption has increased in recent years primarily because of the extension of controls and the proliferation of officials administering a multiplicity of regulations in which there is

wide discretion for administrative authority. Where there is power and discretion, there is always the possibility of abuse, more so when the power and discretion have to be exercised in the context of scarcity and controls. That is why corruption is particularly pervasive in certain "action-laden" areas in Government where the temptation for the officials to succumb is great. Examples of such areas are the revenue, police, excise and customs, public works and licensing departments of the Government. In obtaining a permit or licence, so much depends upon the lower official making an appropriate note, on the discretion vested in officers which is so vast, on the promptness with which the grant or permit is issued and on the resulting profit to the beneficiary that neither the tempter nor the tempted finds it possible to resist making a deal.

It is held by a few that the root cause of corruption is the system of increasing controls and regulation of economic activity by the State. Discussing the problem of corruption Sri C. Rajagopalachari observed[20] that "the system of permits, licences, allocation of transport routes, quotas and similar attempts to administer the economy of a big and busy nation from the Secretariat instead of leaving such things to the consumer and competition in the market, is at the root of corruption ..... The contact between the official and party bosses on the one side, and the very clever, far too clever, businessman on the other, with a tremendous lot of money expected in the business,

produces the national malady we call corruption ..... Unless we minimize official intervention and ministerial power, making or marring the fortunes of businessmen and industrialists, unless we reduce controls upto the level called for by international trade and exchange pressures and bravely decide to knock out the rest and try out the consequences, we are bound to suffer this newly-introduced and widespread malady of corruption at the ministerial and secretariat levels".

This is, perhaps, an overstatement and an extreme point of view. Nonetheless, there is an element of truth in it. The complicated and confusing system of laws and regulations controlling business and industrial activity bewilders the ordinary people and helps the corrupt official to hold them in his grips, on his terms.[21] The swollen administrative set up, lost in files and a hierarchy of officials, serves to protect the delinquent ones who purposely delay papers to attract his victim to his table.

Today, the corruption of public officials does not generally take the ancient method of direct giving of money. In place of such crude tactics, there developed a series of ingenious and subtle devices that help to avoid detection and publicity. It is common knowledge that in New Delhi as well as in State Capitals, there are well known "intermediaries" or "contact men"kept by big business houses who can get things done at various levels. They carefully study the tastes and weaknesses of public officials and then

exploit them to their advantage.[22] According to one report, "as a matter of general practice, they stage mid-night parties for romantically-minded persons in authority where lavish drinks are supplied to induce the negotiating mind. Many public officials are corrupted by accepting expensive entertainment. This generally begins innocently enough with an invitation to lunch. Following this come elaborate dinners, week-end invitations to hill stations, air trips and free rooms in expensive hotels. There is also a group of people who can be relied upon to provide nice-looking young ladies to enliven the idle hours of some romantic person in authority, if he is known for his weakness for the fair sex. All these techniques put the public official under such a feeling of personal obligation that he gradually loses his sense of mission to the public and comes to feel that his first loyalties are to his private benefactors and patrons. He may not even realize the subtle process of influence on him which makes him corrupt. What starts out apparently as pure friendship concludes by being a purchase. Most of the businessmen and industrialists are addicted to this method of making friends and influencing people ..... The initiative and pressure in most cases come from unscrupulous and dishonest businessmen. Some officials may yield willingly or without much resistence, but they seldom begin the liaison".[23] Senator Douglas in a penetrating study reveals the real problem in the following words, which sounds as true in India as in the United States:

> "After accepting gifts and entertainments from these people, if the official later decides against him, the erstwhile host will feel offended and complain of ingratitude. The official

> obviously will be inclined to return the favours he has already received. In other words, he comes to pay off his private debts by giving away public rights. In all this the public official will try to preserve his self-respect by insisting to himself that he is making his decision solely on the merits of the case and not because of any favours previously conferred upon him by his hosts or patrons. The truth will be that the favours which he has received and not returned will make him emotionally more receptive to his host's arguments than would otherwise be the case."

There are other methods employed by unscrupulous big business in undermining the integrity of public officials. The prospect of subsequent employment on attractive terms in private industrial and commercial establishments has now become a serious problem besetting public officials in this country. It is a common feature now-a-days for leading officials of Government to resign or retire and then almost immediately appear as well-paid representatives or directors of private firms doing business with the Government. It is generally believed that such employment is secured in many cases as a quid pro quo for favours shown by the Government servant while in service.[24] These highly-paid agents of big business are in a position to influence Government officials who might have been their colleagues or subordinates to get favours for their masters. Some of these retired officials operate as "contact men" or "intermediaries."[25] During the period 1958-'59 to 1961-'62 it is reported that 284 class I officers and 52 All India Service officials accepted or were permitted to accept lucrative jobs with business concerns after their retirement.[26] It is also reported[27] that the then Home Minister has informed the consultative group of M.Ps on administrative

vigilance and anti-corruption, that during 1964-'65 as many as 329 'contact men' were found 'undesirable'. We have no idea as to the extent to which their corrupt practices have succeeded in inducing the Government to show special favours or unfair advantages to the firms they represented.

There is another temptation to which public officials succumb, namely, to use their public office as an indirect means of making money in an allied private business in which they themselves or their relatives are engaged. Sometimes people use general information and knowledge which they obtain in Government Service to play the market with success. This is obviously an abuse of trust and hence markedly improper. Such cases are seldom brought to light because no definite connection could be proved between the benefits derived and the knowledge abused.

Another environmental factor that helped the growth of corruption is a pronounced maladjustment of Government and Ministers with the administration. This is partly the result of the sudden transition of Indian polity from colonial rule to the status of a Democratic Republic. The inherent drawbacks of an infant democracy were accentuated to a great degree by the injection of considerations based on caste and community, religion and language, ignorance and inexperience, nepotism and favouritism. The fall in standards, was in consequence, sharp and steep, striking and staggering. The new rulers had no clear ideas for keeping

the civil service and the administrative machinery in proper spirits and under effective political control. Ministers, in their ignorance, had to depend excessively on the administrators who took advantage of the situation. Ministers either knew very little of what was happening in the department or were knowing the facts but lacked the courage to be firm. This has resulted in a deplorable environment that helped to entrench corrupt men in office. On the other hand some of the ministers, in order to gain control over the bureaucracy, began to browbeat the officials, scared them with their exercise of authority and started victimizing subordinates to satisfy their political ambitions. The bureaucracy caved in; to save its skin it became subservient and sychophantic to the predatory power of politicians.[28] As a retired civil servant has remarked, "..... a politically unreformed political party is responsible for the virus of corruption in India's body politic."

3. Economic Causes

No impartial observer can fail to take note of certain deeper factors which have encouraged corruption at various levels. Corruption is nourished by rapid industrialisation, by pouring torrents of money into the economy without simultaneously achieving comparable increase in productivity, by reckless expenditure of public money regardless of efficient implementation and available personnel, and by the resulting inflation leading to an increasing disproportion between the needs of a decent living and its cost. This

inflation has led to unrighteousness and its brood - high prices, oppressive taxation, blackmarket, ostentatious living on the one hand and frustrated greed on the other. In a country where the mass of people and the bulk of public servants have no escape from the life of frugality and privations, conspicuous consumption by the few often has a highly corrupting influence. The high cost of living, the disparity in salaries when compared to those of men in similar positions in business and industry and the enormous concentration of wealth and power in the business world make the position of public servants exposed to an atmosphere of temptation. The officer succumbs to temptations because he cannot, with the legitimate income at his disposal, live up to the expected standard of living, and there is no moral atmosphere to deter him. There is no compulsive influence which would induce moral rectitude because the emphasis of the powers-that-be is on higher standards of living, and not on higher standards of conduct.

While some of their temptations may be reduced by an increased income, the bureaucrats at the same time would then be likely to lose any real sense of identification with the average citizen whom they represent. Moreover, men will not be saved from temptation merely by being paid more money. This does not mean that Government servants should be kept on a ridiculously low pay as against inflationary tendencies in the economy, rising prices and standard of living. More often than not public officials, particularly at the lower levels, find themselves unable to make both ends

meet with their salaries and an enhanced salary shall have some salutary effect in warding them off from the evil of corruption.[29]

Corruption can exist only if there is someone willing to corrupt and capable of corrupting. The Santhanam Committee found that both this willingness and capacity to corrupt is found in a large measure in the industrial and commercial classes.[30] In the words of the Committee:

> "To these, corruption is not only an easy method to secure large unearned profits but also the necessary means to enable them to be in a position to pursue their vocations or retain their position among their own competitors. It is these persons who indulge in evasion and avoidance of taxes, accumulate large amounts of unaccounted money by various methods such as obtaining licences in the names of bogus firms and individuals, trafficking in licences, suppressing profits by manipulation of accounts to avoid taxes and other legitimate claims on profits, accepting money for transactions put through without accounting for it in bills and accounts (on money) and under-valuation of transactions in immovable property. It is they who have control over large funds and are in a position to spend considerable sums of money in entertainment. It is they who maintain an army of liaison men and contact men, some of whom live, spend and entertain ostentatiously. We are unable to believe that so much money is being spent only for the purpose of getting things done quickly. It is said that, as a large majority of the high officials are incorruptible and are likely to react strongly against any direct attempt to subvert their integrity the liaison and contact men make a careful study of the character, tastes and weaknesses of officials with whom they may have to deal and that these weaknesses are, then, exploited. Contractors and suppliers who have perfected the art of getting business by under-cutting, of making good the loss by passing-off substandard works and goods generally spare no pains or expenditure in creating a favourable atmosphere. Possession of large amounts of unaccounted money by various persons including those belonging to the industrial and commercial classes is a major impediment in the purification of public life. If anti-corruption activities are to be successful, it must be -recognized thatit is as important to fight

> these unscrupulous agencies of corruption as to eliminate corruption in the public services."

The volume of "black money" has been variously estimated upto 3,000 crores of rupees. The size is not the material consideration in this context. But the question how far it corrupts public life in India is important. It corrupts not only the administration but every phase of public activity. If money is parted with illicitly it is to gain an advantage which could not be got by lawful and straightforward means, and it must find an equally illicit receiver to accept it. The proportion of secret money going into the pockets of public servant would not obviously be large. Nevertheless, even a miscroscopic quantity can benefit unethical businessmen significantly and poison public life.

4. Functional or Procedural Causes:

The Bihar Police Commission attached a great deal of importance to the procedure that is adopted for the disposal of work at various levels in the Government. The Commission observed that it is necessary to remove gaps in the procedures and defects in the laws for minimising the scope for corruption. A simplified law and procedure is advocated by many quarters as a pre-requisite to anti-corruption measures. The Railway Corruption Enquiry Committee[31] also was of the same view and pointed out defects in rules and regulations which leave loopholes for corruption. Again, recently, the Santhanam Committee observed[32] that the procedures and practices in the working of Government offices are cumbersome and dilatory, and the anxiety to avoid delay

has encouraged the growth of dishonest practices. The maze of rules and regulations, the octopus-like administrative machinery, the intolerable delays in official action and general inefficiency provide a fertile field for "hidden corruption".

Inordinate delays have become the besetting sin of our Administration and a blessing for the corrupt. Red-tapism and unnecessary technicalities of certain departmental procedures put the public generally at the mercy of the officials who deal with particular files. The businessman is naturally anxious to get things done for them at any cost and in priority to others. One permit delayed by a few days would cost him lakhs of rupees and the refusal of a permit may mean loss of crores of rupees, and a bribe, promptly given and cheerfully accepted, would save him from incurring these losses. Necessity forces the members of the public to purchase favours of particular officials.

Generally, the bribe-giver does not wish, in these cases, to get anything done unlawfully, but wants to speed up the process of the movement of files and communications relating to decisions. Thus money is given to office assistants, clerks, peons and other small fries, to push things up and to avoid delay and suppression. Besides being a most objectionable corrupt practice, this custom of "speed money" has become one of the most serious causes of delay and inefficiency.

Money passes in other cases for something graver than speeding up of movement of papers in offices; say, to

get a monopoly or a relative advantage of great pecuniary value. Scope for corruption is greater and the incentive to corrupt stronger at those points of the organization where substantive decisions are taken in matters like assessment and collection of taxes, determination of eligibility for obtaining licences, grant of licences, ensuring fair utilisation of licences and goods obtained thereunder, giving of contracts, approval of works and acceptance of supplies. In all these matters a regular percentage is paid by the parties which is shared in agreed proportions among the various officials concerned. Failure to pay the percentage results in difficulty and delay in getting the bills paid. In the higher ranks, differences and disputes about specifications, use of inferior quality of material, and other technical issues are utilised for the purpose.[33] The following case cited in a newspaper is illustrative:[34]

> "A gentleman sold a high priced equipment to the Government directly. The contract was concluded. A few days later, an agent of the officer concerned came to demand a commission. The seller, confident in the strength of a concluded bargain rebuffed him. Within a few days he had to pay the price of the rebuff. Questions were immediately raised as to the validity of the bargain; technical difficulties sprang up where none existed before. The seller was put to a loss of about Rs.40,000/- before things could be straightened out and the concluded bargain implemented by the department concerned."

The problem of corruption is closely linked up with the efficiency, or lack of it, in public administration. The traditional system of good house keeping - sound conservative estimates and an establishment consisting of a compact

manageable staff - has been completely distorted by modern public finance, with its high taxation derived from diverse sources, both direct and indirect, augumented somewhat lavishly by foreign aids, gifts, loans, credits etc., and by the state of staff management by an immense increase in the size of the establishment, the technical, scientific and managerial personnel outnumbering the administrative part, and the ever-widening circle of governmental activities invading every aspect of the citizen's life. Both estimates and establishment are now swollen into unmanageable proportions.

The Railway Corruption Enquiry Committee also noticed a close relation between inefficiency and corruption.[35] In its view, whenever, efficiency is low, the volume of corruption is increased. The general inefficiency in the Railways as a result of chronic delays in correspondence indifference to public complaints, irrelevant replies to public querries and delays in the settlement of claims provide ample scope for corruption.

Complicated procedural laws bring corruption in their way even in our law courts; much more so in the secret recesses of administrative cells. Paul H. Appleby in his study of Public Administration in India found the cause for irregularity and corruption not so much in any low state of personal integrity of officials but on structural and procedural defects. He observed:[36]

> "I should think that the Government's widest single area of vulnerability, in both the States and the Centre, is in the imperfect and belated

> levying and collection of taxes. This is not the first instance corruption; but it is a condition that encourages tax evasion by citizens and invites corruption within the Government. The faults are in part with existing statutes, and in part strictly administrative."

Corruption in police is said to be partly the result of weaknesses in procedure which afford opportunity to an official to accept illegal gratification in the matter of recording entries in the station diary, recording F.I.Rs., in the matter of arrests, execution of warrants and processes, bail, dealing with traffic, prostitution and gambling offences etc. The same is true with regard to the booking of goods and passengers, awarding of contracts, dealing with public complaints and settlement of claims in the Railways where corruption is widely prevalent.

Above all the legal apparatus today is very inadequate to deal effectively with the problem. It is said against some officers justifiable suspicions of corruption might exist even though it might not be possible legally to prove the charge.[37] It was the opinion of the Santhanam Committee[38] that Article 311 of the Constitution as interpreted by our courts had made it very difficult to deal effectively with corrupt public servants and that the protection given to the Services in India is greater than that available in the more advanced countries. Article 311, which deals with dismissal, removal or reduction in rank of civil servants, has been the subject of judicial examination on a number of occasions and of constitutional amendment once.[39]

By judicial interpretation of the scope of Articles 310 and 311 the procedure for imposing the penalties of dismissal, removal, compulsory retirement and reduction in rank became "elaborate, formal and highly involved". Comparing this situation with the civil services of several other countries the Santhanam Committee observed:[40]

> "In India, however, the Government servant is in a far more secure position which on the one hand gives him the right to be informed of the charges and evidence, to file a written statement (at his convenience), to be heard once against the charges and again to represent against the proposed action, to have his case considered by the Public Service Commission, to appeal or submit a memorial and later to move the Courts if he is aggrieved by an order. It is therefore not surprising that a disciplinary case drags on for years and that, in some cases the orders passed are declared void as being violative of Article 311 resulting in payment of arrears of large sums and the public services being saddled with men of doubtful integrity". (emphasis added).

The requirements to be complied under Article 311(2) for dismissal, removal or reduction in rank are given wide interpretation by the Courts some of which on doubtful or erroneous assumptions.[41] The majority judgment by Das C.J. in Purushotam Lal Dhingra Vs. Union of India[42] laid down the following propositions: (1) Article 311 protected all Government servants whether permanent or temporary, officiating or on probation; (2) In the absence of a contract or service rule providing for termination of service by notice a Government servant has a "right" to hold a permanent post till the age of superannuation. This assumption of the Supreme Court in Dhingra's case is held to be erroneous by Mr. Seervai as it overlooks the tenure at pleasure laid down in Article 310(1) and the light thrown on that tenure by

Article 310(2). The learned writer is of the view that no civil servant has a "right" to hold a post for any fixed period of time as it negatives the concept of the pleasure of the President or the Governor as the case may be, under Article 310(1).[43]

It is true that Article 311(2) qualifies the pleasure of the President or the Governor, and the pleasure cannot be exercised if a Government servant's service is to be terminated as a punishment for misconduct or inefficiency. In such a case Article 311(2) requires that a reasonable opportunity to show cause against the proposed punishment must be given to the Government servant and the rules prescribe an elaborate machinery for serving a "charge sheet" asking for an explanation of the charges and holding an inquiry at which witnesses can be examined and cross-examined. Article 311(2) requires two opportunities to be given before any order inflicting the punishment of dismissal, removal or reduction in rank. The words "reasonable opportunity" came to be interpreted as conformity to the principles of natural justice.[44] And as observed by the Santhanam Committee,[45] the fact that the rules of natural justice have not been completely or precisely determined has enabled the courts to prescribe various "restictive conditions" from time to time. All these have tended to make disciplinary proceedings against Government servants highly involved and to protect men of doubtful integrity in the public services.

The unwillingness on the part of the authorities to deal drastically with corrupt and inefficient public

servants also contributes to the growth of corruption.[46] To infuse confidence in the public and get their cooperation in administering the affairs of the country, it is primarily necessary to enquire promptly cases of corruption, particularly in the higher levels.

The absence of a regular permanent machinery which can investigate charges of corruption including those against Ministers as comprehensively and expeditiously as possible has also facilitated the growth of corruption. The present methods are so cumbersome,[47] and the initiative lies so decisively with the executive, that there is a lot of time wasted between the initial charges and the final inquiry. Invariably this grace period is used to hush up matters and destroy evidence.

Doctrinaire attempts to regulate public morals is yet another cause of corruption. Prohibition and Gold Control are instances that provide the police with immense opportunities for corruption. Laws which are not sincerely and completely enforced or which are not supported by the majority public opinion only result in confusion, corruption and creation of an ever-increasing lawless group of persons.

Some of the rules framed by departments under particular laws affecting the citizens are circulated only amongst the officials through departmental circulars with the result that an ordinary citizen finds it difficult to get his rights without the assistance of intermediaries and touts who make a good business of it.[48]

Further, many of the laws do not provide deterrent punishment for their violations. The sort of corrupt practices that we have yet to recognize by our law as criminal are being punished in Soviet Russia by life imprisonment and even by execution.[49] If a man is allowed to keep his ill-gotten wealth after paying a nominal fine or serving a few months in prison, he would gladly do this and enjoy the rest of his life with the society having forgotten, or forgiven, his crime. Therefore, the basis of an effective anti-corruption strategy should be that the corrupt shall not enjoy the fruits of corruption.[50]

5. Sociological Causes: Role of the Public

Public apathy, indifference and lack of enthusiasm in ventilating corruption in places known to them contribute to the unabated continuation of the evil. Many consider it as harmless and often permit such activity in their own backyards. This attitude helps anti-social elements to rationalize their illegal behaviour.

The main difficulty in the matter of detection of bribery is the natural reluctance of the bribe-giver to give evidence or to help in any way in the investigation of the crime. He either receives some benefit, which, in the ordinary course he would not, or avoids trouble, real or threatened, which otherwise would cause him injury in person, property or reputation. In the former case, he will not only not volunteer information but also hide it

even if others gave out. In the latter case, one would come forward if one was unjustly harassed but this would again depend on whether one could or could not be further harassed by the original tormenter or extortioner, his heirs or administrators.

The evil of corruption is supported by the appetites of those members of the general public who are, in the words of Mark Antony, "honourable men". As observed by the Indian Railway Enquiry Committee, 1947, "some of the travelling and business public acquiesced in the payment of additional premia for service in the Railways, and considered it 'smart' to obtain by bribery an advantage to which they are not entitled."[51]

During the pre-independence days, the general attitude of the public towards the Railways was to take advantage of the facilities it afforded without paying the due cost if possible. Unfortunately this attitude still persists amongst large sections of the travelling and business public.[52] In 1963 alone 5.7 million passengers were detected travelling without tickets. A sum of Rs.118 lakhs was collected from these persons as railway fares and luggage charges and another Rs.38 lakhs as penalty. Even so the Railways incurred a loss of more than Rs.3 crores by ticketless travel alone. Although checking has been made more strict and a large number of inspectors have been appointed to detect violations of the law, lakhs of persons including students, political workers and

government servants travel merrily on the railways without bothering to purchase tickets. In this connection, the observations of the Railway Corruption Enquiry Committee is worth recording:[53]

> "It is not enough for the public to say that if bribes are not given, their work will not be done and they will be harassed. Citizens of a free country have the right - nay, the duty - to insist that public servants render due service for which they are paid from public coffers. It is rightly said that eternal vigilance is the price of liberty. Our democracy will not work unless there is honesty and efficiency in Administration. Under present circumstances this is not possible merely through Government action. Citizens themselves will have to be vigilant and they must insist upon their rights. They should also be prepared to pay, if necessary the price of such insistence with some temporary loss or inconvenience to themselves. A strong public opinion must therefore be created and a determined effort made to withhold payment of illegal gratification."

Extent, Magnitude and Cost of Corruption:

The extent of corruption in the Services, civil or military, cannot accurately be ascertained on the basis of complaints received, investigations made, departmental proceedings taken or actual prosecutions effected and punishments procured. Statistics available in this respect would give an idea of the prevalence of the malady and only provide broad indications of the extent of the problem. Only a very small percentage of the offences of this category would ever be detected and a still smaller fraction subjected to legal or departmental action.[54] This is because of various reasons. In the first place, the very nature of these offences is such that in the normal course there would not be any reason for complaint to either

party to the transaction - the bribe-giver and the bribe-taker - for both of them receive illegal advantages out of it. Secondly, many of the malpractices now in vogue in the administration and in public life are such that they are difficult to be included within the legal definitions though they carry blameworthiness to a similar or even greater extent.[55] Finally, even if prosecution proceedings are taken on prima facie justifiable cases of corruption they often end in acquittals as the prosecution is unable to prove guilt "beyond any reasonable doubt". The legal philosophy that "a hundred guilty persons may escape but not a single innocent person should suffer" overlooks the fact that no guilty person can escape without making some innocent suffer. Acts of corruption are not normally performed in the open and in the presence of witnesses of the highest probity and integrity. The working of the "benefit of doubt" principle, though laudable for its democratic content and concern for individual rights,[56] is not helpful in curbing corruption. Government, with all the resources in men and money and sources of information, have secured conviction in only a negligible fraction of known cases of corruption. And every unchecked act brings public administration in greater disrepute.

Before pondering over the available data on the quantum of corruption, it has to be pointed out at the outset that no official agency or administrative authority in charge of anti-corruption work, either in the State or in the Centre, could claim to have comprehensive

information of even the known cases of corruption. While in some States an organized anti-corruption machinery is itself non-existent, in others their working is far too inadequate. In the circumstances, no useful purpose will be served by assessing the extent of corruption in the States on incomplete details. Even in respect of the Centre, lack of co-ordination between agencies engaged in anti-corruption work and absence of any systematic reporting of the cases detected put serious disadvantages in the way of any realistic study of the problem. In this respect, the report of the Committee on Prevention of Corruption (1964)[57] has been of great service in providing consolidated account of corruption cases investigated or punished by the Central anti-corruption machinery. The extent and magnitude of corruption is examined here in general, and then in selected departments of the Government.

For the purposes of this study, complaints and vigilance cases dealt with by the Delhi Special Police Establishment[58] and the Administrative Vigilance Division[59] of the Union Home Ministry respectively, are analyzed for a period of five years from 1956-57 to 1962. The statistical information provided here are gathered from the annual reports of the anti-corruption machinery at the Centre -i.e., Delhi Special Police Establishment and Administrative Vigilance Division - and the final report submitted by the Committee on Prevention of Corruption in 1964. Most of the cases under review related to the offences of bribery, corruption and misconduct, misappropriation and embezzlement, cheating, forgery, possession of disproportionate assets,

breach of import-export regulations etc., and involved large number of public servants from lower ranks as well as from gazetted cadre.

Classification of Gazetted Officers against whom cases were investigated during 1957-62.*

TABLE - VI

Rank of Officers	1957	1958	1959	1960	1961	1962	Total
Officers of the Secretariat of and above the rank of Under-Secretary.	..	4	4	4	4	4	20
Officers of the Secretariat below the rank of Under-Secretary	..	3	5	..	5	5	18
Engineers of above the rank of E.E.	41	16	35	26	21	22	161
Engineers of below the rank of E.E.	..	65	50	42	40	22	219
Railway Officers (other than Engineers).	17	16	11	6	3	11	64
Military Commissioned Officers.	14	16	26	25	17	22	120
Directors, Dy.Director, Asstt.Directors in the Departments of D.G.S&D, Agriculture, Archaeology etc.	10	4	4	14	10	7	49
Controllers of Imports & Exports and Iron & Steel.	..	6	5	6	8	7	32
Income-Tax Officers.	6	5	8	4	9	15	47
Excise & Customs Officers.	2	6	5	5	12	16	46
Senior Officers of Statutory Corporations & Public concerns.	..	..	13	11	5	18	47
Other Class I	37	27	40	21	13	29	167
Other Class II	54	17	28	30	50	34	213
Total.....	181	185	234	194	197	212	1203

*Source: Santhanam Committee Report (1964) P.16.

The table above indicates the rank and organisation of gazetted officers against whom cases were investigated by the Delhi Special Police Establishment during the year 1957 to 1962.

The table that follows gives a picture of Ministry/Department-wise distribution of complaints and vigilance cases during the period between 1957 and 1962.

(TABLE Page - 241)

T A B L E VII

MINISTRY/DEPARTMENT-WISE DISTRIBUTION OF COMPLAINTS AND VIGILANCE CASES DURING THE PERIOD BETWEEN 1957 AND 1962*

artment.	No of complaints	No of Vigilence cases	Dismissal		Removal		Compulsory Retirement		Reduction in rank		Other Penalties	
			G.	NG.	G.	NG.	G.	NG.	G.	NG.	G.	NG.
Industry	1129	126	1	5	1	11	-	-	2	8	6	36
Industry C.L.A.)	25	35	-	1	-	1	-	-	-	-	-	4
e & n.	9	7	-	2	-	-	-	1	-	-	-	1
	4999	1186	6	59	2	48	2	7	1	59	14	427
	244	59	-	3	-	2	-	-	1	-	-	16
ffairs	242	80	2	10	1	7	-	-	2	2	5	20
ustoms & cise)	7984	2746	8	104	2	147	1	7	6	131	22	906
fence	107	57	-	2	-	4	-	-	1	3	2	24
conomic	213	70	-	1	-	3	-	-	1	3	1	12
xpenditure)	67	35	-	-	-	1	-	-	-	-	-	9
ncome Tax)	1678	327	4	33	4	18	2	2	4	30	12	147
evenue)	-	4	-	-	-	-	-	-	-	1	-	1
iculture(Agri.)	822	539	-	10	-	40	-	-	1	44	7	222
iculture Food)	1311	934	-	22	-	46	-	-	5	17	5	548
	1595	127	-	6	-	15	1	1	-	11	2	35

rtment.	No of Complaints	No of Vigi-lances cases	Dismissal G.	Dismissal NG	Removal G	Removal NG	Compulsory Retirement G	Compulsory Retirement NG	Reduction in rank. G	Reduction in rank. NG	Other penalties G.	Other penalties NG
Power.	516	116	-	7	2	8	-	-	1	6	10	17
loyment.	649	267	3	17	4	22	-	-	2	19	9	103
	15	6	-	-	-	-	-	-	-	-	-	4
.	538	73	-	5	-	7	-	-	-	4	2	13
	7214*	2047**	-	23	-	86	1	1	1	55	8	597
esearch ffairs.	738	352	-	6	1	26	1	4	2	8	10	194
y Deptt. of)	212	42	2	3	-	6	1	1	-	4	2	8
Communi-tt. of	3425***	4684	-	214	4	185	6	25	3	236	23	2769
Communi-tt. of	516	510	1	93	2	25	1	2	3	14	6	84
graphs.	2842****	5909	-	630	-	394	-	61	1	896	40	3887
f on.	2138	289	1	9	-	27	-	-	1	3	10	60
ng & on orks, pply)	4407	1073	7	26	1	15	2	4	8	47	106	227
.	-	-	-	-	-	-	-	-	-	-	-	-

1962 only.
1962 only.
udes figures for DGP & T for the years 1958 & 1959.

	No of Complaints	No of Vigilance Cases	Dismissal		Removal		Compulsory Retirement		Reduction in rank		Other Penalties	
			G	NG	G	NG	G	NG	G	NG	G	NG
t	230	128	-	13	-	16	-	-	-	6	-	63
	-	-	-	-	-	-	-	-	-	-	-	-
	-	3	-	2	-	-	-	-	-	-	-	-
n	142	55	-	1	-	-	-	-	-	-	1	26
	10*	5**	-	-	-	-	-	-	-	-	-	-
on	4861	1691	-	137	-	89	-	1	8	30	10	658
	1527***	1785	-	86	1	139	-	9	-	87	04	796

ures for year 1957, 1960 & 1961.

ures for 1957, 1960 & 1961.

958 incorporated against Ministry of Home Affairs.

Table VIII below gives the number of cases investigated by the Delhi Special Police Establishment during the year 1957 to 1962 classified according to the nature of offences.*

TABLE VIII

YEAR	Cases involving allegations of bribery, corruption, misappropriation and other types of misconduct.	Cases of possession of assets by public servants disproportionate to their known sources of income.	Cases of breach of import/export regulations.	Cases against private persons and companies.
1957	294	-	184	5
1958	351	-	137	8
1959	912	-	131	5
1960	940	89	124	6
1961	1004	100	82	17
1962	1168	93	113	34
TOTAL	4669	282	771	75

* Source: Santhanam Committee Report, p. 17.

Table IX below indicates the number of cases relating to violation of import/export regulations registered and investigated by the Delhi Special Police Establishment.*

TABLE IX

YEAR	No. of firms.	No. of licences obtained as a result of mal-practices.	Value of licences mentioned in column.	No. of firms blacklisted.
1958	90	135	76,66,237	62
1959	68	139	49,83,128	129
1960	84	82	37,13,082	88
1961	156	137	47,92,054	360
1962	73	106	26,69,641	74
TOTAL	451	660	2,38,24,142	433

* Source: Santhanam Committee Report, P. 17.

The fact that licences worth Rs.2,38,24,142 were obtained by fraud and other types of malpractices is clear indication of the extent of the problem in the licensing activities of Government. Each licence, if sold, will fetch 100% to 500% or more of its face value. The Santhanam Committee, on the above premises, has observed that a huge unearned profit of anything from rupees two to ten crores should have been made in these transactions and a sizeable part of it should have gone into the pockets of public servants.[60]

A few other observations of the Committee are worth reproducing in so far as they give an idea of the magnitude of the problem of corruption in the Services.

Between 1957 and 1962, the Chief Technical Examiner's Organisation unit of the Ministry of Works, Housing and Supply detected 1593 cases of over-payments in the Central Public Works Department involving an amount of Rs.43,66,667/-. The Committee further found:[61] "During the Second Plan period the total expenditure on construction and purchases was of the order of Rs.2,800/- crores. It is common knowledge that the custom of percentages is prevalent in respect of contracts of construction, purchases and sales and this is shared in agreed proportions amongst the concerned officials. We were told that in the contracts of construction, 7 to 11% was usually paid in this manner ..... If it is assumed that even 5% of the total investment on constructions and purchases during the Second Plan period is accounted for by such corrupt practices, the total loss to the exchequer is about Rs.140 crores."

On the subject of tax evasion and avoidance the Committee are of the opinion that some portion of it at least is shared by public officials including the assessing officers. And the issue is serious in view of the fact that about Rs.45 crores of tax is evaded annually by assessees in the higher income groups, the evaded income being about Rs.230 crores.

Furthermore, the Committee assumed that "since smuggling in this country is a well-organised racket, it is possible that some at least of the customs officials are involved in this racket either on payment of a share regularly or on each occasion."[62] It should be noted that as a result of the anti-smuggling measure of the Government, smuggled goods of the value of Rs.434.92 lakhs of rupees were seized in 1962 alone, and what has been seized does not represent the whole volume of the goods smuggled in. Police connivance or abetment in smuggling activities has been revealed in a recent survey of the extent of corruption in the Delhi Police.[63]

The following tentative conclusions can be drawn from the statistics and data provided above:-

i) There has been a steady increase in the number of corrupt officials brought to book (See Table VI, Supra). Of course, this might be taken as evidence either that anti-corruption measures have been enforced more vigorously or that the evil itself has grown alarmingly. Both assumptions probably would be valid upto a point. However, there is no gainsaying the fact that bribery, corruption and similar offences now prevail in a considerable scale in almost all the Ministries and Department of the Government.

ii) It is clear that corruption and other malpractices are not confined to lower ranks of public servants but the higher echelons of the administration are equally dishonest at many levels. (Table VI Supra). Of late, Ministerial corruption has further worsened the problem. (See discussion below on political corruption).

iii) Poor salary or low economic status is not always the cause for white collar crime in government and politics. In many cases mere greed and averice form the basis for official misconduct. However, the extent of corruption directly depends on the opportunities for it in particular Ministry/Department.

iv) The loss to the public exchequer in terms of money as a result of corruption in the services is exceedingly large, much more than ordinarily believed.[64]

II

As pointed out in the first part of this chapter, it is difficult to make a precise estimate of the extent of corruption among Government servants as a whole. On the basis of the annual reports of the Delhi Special Police Establishment and those of the Administrative Vigilance Division of the Union Home Ministry as also the recent Report of the Committee on Prevention of Corruption headed by K. Santhanam, M.P., a tentative estimate of the extent and magnitude of corruption in the Central Government has been attempted in the earlier Section. In this section it is proposed to discuss:

a) practices that lead to corruption in certain departments/organisations under the Central Government.

b) extent of corruption in the enforcement machinery particularly the police, and

c) the nature and shape of the evil in certain public undertakings, autonomous bodies, cultural organisations, State Governments and municipal bodies.

The Railways:

The Report of the Railway Corruption Enquiry Committee[65] of 1953-55, supports the general complaint that in the Railways, corruption is widely prevalent from top to bottom. It is an admitted fact that 'bakshish' or 'mamul' is collected at various levels by the Station staff in respect of booking of passengers and goods. The railway staff takes advantage of the ignorance of the parties concerned by misrepresenting the rules in force or giving false information about restrictions and quote limitations, and then pretends to confer favours without violating the rules.[66] The authorities have been trying to put down this evil by various institutional checks though they have not resulted in commensurate success. Corruption is entrenched in this biggest public undertaking and it is connived at by certain sections of the public. The public tempts the railway staff to falsify records to save themselves the payment of railway dues, and thereby gaining substantial advantage.

A passenger in dire need of a Railway berth or a businessman who has to transport his perishable merchandise urgently is at the mercy of the petty official who controls allotment of accommodation and wagon space on the Railways. The evil does not end there. The businessman naturally passes on to the consumer his investment in greasing the palms of the officials. The habit also grows. Instead of going through what is described as a cumbersome and often times unsuccessful

procedure of securing a Railway berth, the temptation is to bribe one's way to it. According to the Railway Corruption Enquiry Committee[67] it had become such a convention to bribe the Railway staff for obtaining wagon space that an official of a Sugar Mill had issued written instructions to his staff regarding the rate of payment to the Railway officials for loading their supplies. He was reported to have laid down that the station master, the guard and the engine driver should be paid 75 paise, 19 paise and 12 paise respectively for every wagon loaded.

In the Engineering Department, the Kripaloni Committee found the existence of corruption extending from senior officials at the highest level down to the inspecting staff.[68]

The Defence Services:

It is the general impression that the Defence Services - Army, Navy and Air Force - are above corruption,[69] and are comprised of patriotic people of integrity and honesty. This is not wholly correct. While some of their members die on the battle field, others are busy lining their own pockets. There have been cases of horribly shady transactions, of shaky erections and constructions, of supplies of stuffs less in quantity and worse in quality than actually paid for.[70] The reports of the Delhi Special Police Establishment reveal few cases every year where senior army personnel have been prosecuted for misappropriation and embezzlement of Government funds. From 1957 to 1962, one hundred and twenty cases of corruption against Military

Commissioned Officers were investigated by the Special Police Establishment.[71] The expenditure on defence is of the order of Rs.1000 crores every year. There is large scope of corruption and misuse of funds in the purchases, constructions, supplies and other activities in connection with defence, and only an official enquiry can reveal the extent of corruption in the colossal expenditure of this Department.

The Public Works Department:

The Public Works Department is responsible for the execution and maintenance of works of all classes of civil Departments of the Government and the opportunities for corruption are abundant. People complain how in spite of their lowest tenders and exact mathematics on paper, roads, canals and buildings have their elastic margins to be shared by engineers and other public officers including accountants, bill-clerks, head-clerks etc. It is no wonder that during the last decade of our planned development, contractors as a group improved their position and wealth considerably.[72] In collusion with unscrupulous contractors the engineering and supervisory staff of the Government also made money by dubious methods. It is said that many an overseer earns, or rather collects more than what High Court Judges get by way of salary!

The major portion of the activities of this department involves considerable expenditure of public funds through departmental agencies and contractors. There is wide scope for corruption to the supervisory staff who

interpret the various clauses of the contract, specifications and quality of work. Through defective tender notices carrying ambiguous specifications, manipulations and substitution of tenders, splitting of contracts, divulging information to the favourite contractors about rates of other contractors, and liberal interpretation of the contract conditions they show favours to contractors who please them by gifts etc., in return. Certain contractors resort to deliberate under-cutting and later make good the loss by sub-standard work. In certain cases, all contractors join together and quote higher quotations with the understanding that the one amongst them should quote slightly lower rate than others so that the contractor concerned gets the order. This system of 'pooling' is generally resorted to with the connivance of the public works Department officials.[73]

The Civil Supplies Department is another establishment where similar circumstances prevail to make easy money through corrupt means.

Import and Export Control Organization:

Import control was first introduced in May, 1940 as a war-time measure under the Defence of India Rules. As its primary object was to conserve shipping space, it was limited only to a few commodities; but with the progressive increase of foreign exchange difficulties and in the interest of economic development of the country, it became necessary to extend its scope. The control is now exercised under the Imports and Exports (Control) Act 1947 and the orders issued thereunder.

Issue of licences for the import and export of goods and investigation and punishment of violations of Imports and Exports Trade Control Regulations constitute a major and important portion of the work of this organisation. Till 1962 licensing was done once in six months. On an average, 1,60,927 licences of the value of Rs.413.03 crores were issued during each half year. Import licences when sold in the market fetch 75% to 500% more of their face value depending upon the commodity. This gives a measure of the profit that could be made.[74]

Issue of licences in the names of fictitious concerns, trafficking in licences, importing goods against bogus licences, selling of goods imported against actual users licences, over-invoicing and under-invoicing of goods at the time of import and export, or applying for licences by mis-direction of value, sort, quality or description of goods etc., are some of the common malpractices found in this important area of governmental activity.[75] Corruption is found to be rampant in transactions relating to obtaining of quota certificates, essentiality certificates, licences and their utilisation. Import licences granted as export incentives are transferable and this is said to have caused serious damage both to the domestic market and to our foreign exchange resources. Such licences, it is suggested are a fruitful source of accumulating unaccounted money and evasion of taxes.[76] Above all these delays on the part of this Organisation is of serious consequence as the fortunes of trade depend so much on prompt action in obtaining licences, quotes etc. Delays are a fertile source of corruption that would help dishonest

officials to make easy money.

Customs and Excise Departments:

These are among the most important revenue-earning departments and practically every decision taken here has a financial implication. The Customs Department is the executive organisation for levy and collection of customs duties by assessment of goods coming into or going out of India and for prevention of smuggling. This department also administers the various restrictions and prohibitions under diverse Acts relating to imports and exports of goods.

Delay in clearance of goods, under assessment of goods by Preventive Officer, allowing clearance of smuggled goods and connivance at smuggling, declaration of new articles as old, harassment of parties, substitution of seized articles by spurious ones, deliberate wrong classifications for purposes of customs tariff so as to give the party wrongful advantage etc., are some of the few ingenious devices adopted by the Customs staff to extort illegal advantages to themselves. The resulting loss to the public exchequer is great and generally incalculable.[77]

Income Tax Department:

The function of the Income Tax Department primarily involves assessment, collection, recovery and refund of tax. The work involved is complicated. The Income Tax Department is also entrusted with the administration of Excess Profits Tax Act, 1948, the Business Profits Tax Act, 1947, the Estate Duty Act, 1953, the Wealth Tax Act, 1957, the Expenditure

Tax Act, 1957 (now repealed) and the Gift Tax Act, 1958.

The two major methods of corruption existing in this Department are:[78]

i) wilfully showing favours to tax-payers in matters relating to assessment, penalties, recovery, refund, appeals etc., and

ii) deliberetely causing harassment with a view to gain favours from the tax-payers.

The Santhanam Committee was of the opinion that apart from the general practice of corruption,[79] "the most important and urgent problem that has to be dealt with by this Department is that of evasion and avoidance of tax as such mal-practices represent the graver types of white-collar crime and cause damage to the economy of the country and place an unequitable burden on the honest tax-payer. Tax so evaded and avoided is kept as unaccounted money and one of the many uses to which it is put is for corrupting public servants."

The secrecy provisions in the taxation laws only help big assesses to indulge in corrupt practices and the Santhanam Committee has rightly recommended its abrogation.[80]

Public Sector Undertakings:

The corruption that is found existing in the Ministries and offices of the Government extends to the corporate undertakings of the Government and Government-sponsored cooperative organisations. In matters regarding recruitment and the management of personnel, awarding contracts for work and supplies, sales and disposals of goods etc., abuses are

easily possible and, in the absence of an efficient vigilance organisation these areas of Government activity may provide for easy exploitation by dishonest officials. There have been instances where gross mismanagement of public funds in these undertakings have been detected. The reports of the Public Accounts Committee carry distrubing stories in this regard.

There are allegations, some genuine, that the much publicised cooperative movement has degraded into a means of exploitation in the hands of dishonest political workers and partymen. Very recently inquiries have been instituted against the Managing Director and Secretary of the Delhi Central Cooperative Store for alleged malpractices, profiteering etc.[81] Ever since the Government began giving generous loans and grants, cooperative societies have sprung up like mushrooms. Many of the labour contract cooperative societies which were getting Government contracts at negotiated rates used to play the role of brokers by handing over the work to private individuals after keeping a margin of profit.[82] The President of the Federation of Indian Chamber of Commerce and Industry has condemned the working of cooperative movement as unsatisfactory and giving rise to yet another kind of corruption.[83]

State Governments and Municipal Bodies:

Apart from occasional outbursts in the legislatures, municipal councils and regional press, the problem of corruption has not attracted as much attention in the States as in the Centre. In some of the States the anti-corruption machinery

is non-existent, defunct or neglected. Proper investigations are not promptly taken and legal proceedings are delayed or dropped due to political influences. Though opportunities for corruption and bribery are comparatively not large in the case of State Governments and Municipal Bodies their administration is in no way clean and satisfactory.

According to an official report[84] on the working of the Punjab State Vigilance Department for the past four years (1959-63), 29,163 complaints of corruption against government employees were received and inquiries were instituted into 16,434 cases. As a result about 3,000 Government officials were dismissed or punished and a few departments were advised to reduce the pension of 28 gazetted officers. Evasion of sales tax amounting to Rs.3.90 lakhs involving 42 officials of the Department was detected in a period of two years.

In Bihar, the anti-corruption Department has investigated 5,523 cases of corruption against Government servants since 1958.[85] From every other state we get equally disturbing reports of corruption, bribery and other types of white collar crime indulged in by government servants and politicians.

The state of affairs in some of the Municipal and local bodies give an appalling picture of the way civic administration is conducted in this country. Much of the corruption in this field remains undetected. It is when a local body is superseded and placed under an official administrator - in Utter Pradesh practically every important

Municipality has been under supersession at one time or another during the last fifteen years[86] - that the public begins to sense that there is something wrong. The State Government which is responsible for the efficient and honest working of the local bodies, is reluctant to disclose the real position lest it rebounds to its own discredit. The occasional denunciations of corruption in local administration serve only the immediate purpose of frightening a few and temporarily satisfying the public opinion. Many councillors seem to have learnt to put up with it, or perhaps have come to the conclusion that corruption cannot be eradicated.

Police Services

There is a general impression in the country that the custodians of law and order, the police, are themselves responsible, either directly or indirectly for the perpetration of a large number of crimes. Though one may not agree with the opinion of Justice Mulla of the Allahabad High Court,[87] one will have to concede that the Police Department has for long been notorious for corruption and graft. (Mr.Justice Mulla is reported to have observed in State Vs. Mohd. Naim as follows:

> "If I had felt that with my lone efforts I could have cleared this Augean Stable which is the Police Force, I would not have hesitated to wage this war single handed..... There is no single lawless group in the whole country whose record of crimes comes anywhere near the record of that single organized unit, which is known as the Indian Police Force."

The remarks were later expunged by the Supreme Court on an appeal by the State). Reports[88] indicate that every fifth policemen in Madhya Pradesh faced an inquiry and charges of

corruption in 1961. As a result, 16 police officers and 201 policemen were dismissed, legal proceedings in courts were taken against 4 police officers and 16 policemen while 1,424 officers and 6,503 policemen faced departmental inquiry and action. This is indeed an alarming record when it is known that in a number of other cases either the authorities did not proceed at all or were not reported to them.

According to a survey[89] made by a senior police officer in Delhi, the capital's policemen were found to have 36 ways of taking bribes. The percentage of police connivance in different types of offences varied from 5% to 25%. About a fourth of the smuggling cases, this officer found, were the result of connivance by police. A secret investigation[90] carried out by the anti-corruption Bureau of the Delhi Police revealed that the police refused to register 65 per cent of the crime cases in the Capital!! The high incidence of 'crime burking' has shocked even police officers. To their amazement they discovered that serious crimes like robbery and burglary were not investigated. Posing as complainants, officials of the Anti-corruption Branch went to 36 police stations to register their cases and the result are as follows:[91]

Nature of Offences.	Cases sought to be registered.	Actually registered.
Robbery	3	-
Burglary	2	-
Pickpocketing	10	2
Cycle thefts	10	5
Misc. thefts	6	3
Loss of property	1	1
TOTAL:	32	10

Corruption in police has roots deep in history. The Indian Police Commission of 1902-03 found that the Department was steeped in corruption. The second chapter of the Report of the Commission contains their full concurrence of the popular condemnation of the police as "dishonest and tyrannical". The problem became greatly aggrevated as a result of the last war and the later unsettled conditions in India. Today corruption in Police Services is an inveterate disease defying all administrative measures that have been adopted from time to time to tackle this problem. As the Bihar Police Commission has observed,[92] the corruption on the part of a policeman cannot but be more intolerable because of the greater opportunities of oppression and extortion, which his police powers afford and also because of his intimate connection with the life of every individual.

It should be admitted that in the peculiar nature of his duties policeman has frequently to face several pit-falls. Today he is called upon to supervise the execution of various controls and a number of regulatory legislations which some sections of the public may dislike and disobey. The tremendous power of the vested interests of vice and corruption has also made the task of the honest police official very difficult. The criminal, the gambler, the dishonest liquor vendor, the prisoner, the dishonest business-man and all those who try to defy the laws of the land or make an effort to escape from the penalty of the law are ever ready to pay a price and only a strong sense of duty and much stronger character help a policeman in resisting any such

overture.[93] They are thus generally exposed to peculiar temptations and many officials who are ill-paid or whose moral fibre is not strong enough to resist such pressures succumb to them.

A study of corruption and illegal behaviour in the Delhi Police is reported to have revealed that at the lower levels the Police usually meddle with the investigation and prosecution of cases.[94] The weaknesses of the police cases are some times leaked to the opposite party and strong points which may secure the conviction of the accused omitted from the case. Case diaries are sometimes copied out and sold at big price to interested parties. Among the most abused powers of the police are those which empower them to make arrests for alleged apprehension of a breach of the peace and for loitering.

The institution of police touts in which even retired police officers are engaged is another serious menace practiced in a large scale in the matter of tampering with the investigation of crime and letting criminals escape the legitimate processes of law. Some policemen are themselves ready to protect criminals close to them. Dishonest policemen would inform the criminals a few hours in advance of an impending raid as and when one is planned by their superior officers.[95] As a result of all this the impression is gaining ground in the public mind that the men at police stations generally have full knowledge of crime and criminals in their areas but, for one reason or the other, are most reluctant to act.

Some of the misdeeds and irregularities of the Police in cities and the countryside are poignantly given in an essay on the subject by a retired police officer,[96] the relevant portion of which is reproduced below:

> "The Thana Police: The illiterate mass at the countryside has been completely at the mercy of the subordinate thana police.... Informants have to pay something for having their information recorded and substantially if land disputes or other interests are involved; First Information Reports are twisted, minimised or exaggerated; cognizable cases are made non-cognizable and vice-versa; names of accused or suspects are left vague; unnamed people are chased and harassed; investigations are prolonged; loopholes for acquittals are left even in cases sent up for trial and all these with a view to making some extra money."

> "The Town Police, in addition to the above, indulge in the following malpractices. (1) tinkering with prostitutes, monopolising a few for themselves, and harassing visitors to prostitutes; (2) fraternising with bad characters, patronising some, victimising a few and even sharing with some; (3) helping pilferers and smugglers and sharing in spoils; (4) patronising gamblers and exacting commission; (5) enjoying free rides in buses, rickshaws and free cinema shows; (6) patronising drivers or owners of vehicles and forbearing from strict checking. Licensing and testing of vehicles are said to yield something. (7) having free drinks and food at stalls; (8) making money over cases from complaints and the accused etc."

It is said that even in jails corruption is practised by the warders in collusion with clever and loyal prisoners.[97] The following incident narrated by Abul Hasanat would indicate one such practice. "An ex-convict returned to his village home after undergoing three or four years of rigorous imprisonment, but with quite a few thousand rupees. This man picked up intimacy with the jail authorities and then was used as a negotiator. He would impress upon new

convicts that their lives would be pleasant, provided they have rich relations to help. Money paid in through dummies would be used to appease the doctor for beds in hospital, the warder for employment on light work, the jailor for introducing amenities etc., etc."

The Judiciary:

Of the three arms of Government, public criticism is mainly directed against the corrupt practices of the Executive. It is fortunate that corruption on the judicial side has so far been a remarkable rarity. Of late, however, there are disturbing reports of the incidence of corruption in the judiciary particularly in the lower ranks. The subordinate court staff are said to earn quite a tidy little sum by creating odd difficulties for the parties to a case.[98] In direct cases they receive an initial goodwill offering, then something more for giving precedence, yet something more for prompter issue of processes, or delaying matters by not issuing them or intentionally issuing defective ones so that no action can be taken. They tinker with dates, prolong or expedite matters, and share spoils over bail matters.

A number of lawyers and litigants are of the view that bribery in criminal courts begin with the process of bail. One has to "follow it up" when bail has been granted. The phrase "follow up" in the courts normally means follow up with money. Otherwise the subordinate staff in courts may delay the preparation of the release warrant. By illegible writing or wrong entries in the release warrant the court staff can harass the parties and delay the matter.

Recently it was reported that a magistrate in Delhi was found to have signed a bundle of summons forms with the space, where names are filled in, left blank. The forms had been kept in an almirah in the court room to which the subordinate court staff had access. In another incident a magistrate is reported to have written and signed one judgment and pronounced in court a contrary one. In Rajasthan, a magistrate was caught red-handed while accepting Rs.11,450 from a person accused in a passport case.[99] Such instances in the lower judiciary are becoming a common feature particularly where the separation of judiciary from executive has not been fully effected and where the system of honorary magistrates is followed. There are reported cases of corruption by judicial officers of the higher echelons also.[100]

It is all the more disturbing to find even some responsible persons to have accepted corruption at the lower level of the judiciary as part of the game. Only a few seemed to realise that it would be a sad day if people lost their faith in the process of justice.

The wholesome principle of keeping the judiciary separate from the executive has not been fully implemented with the result that there is general suspicion that the judiciary is susceptible to governmental pressure. That the suspicion is not entirely unfounded was proved by a recent observation of the Supreme Court against a Delhi Magistrate who was found to have taken an uncalled for initiative in a case in which the Punjab Government were said to be interested. Further, public suspicion is strengthened by

the reported practice of judges being granted interviews by Ministers, Judges accepting invitations from the Government as 'commands' and judges tendering private legal advice to members of the Union Cabinet. Greater detachment from the executive is called for by the judiciary in whose independence, competence, and eternal vigilence hinges the future of democracy in India.[101]

Another portentuous feature of the judicial administration was brought to light by the Law Commission which made some strong observations[102] on the appointment of judges. "It is widely felt", the Law Commission observed, "that communal and regional considerations have prevailed in making the selection of the judges .... It is the general impression that executive influence exerted from the highest quarters has been responsible for some appointments to the Bench." These observations, though disputed and contradicted, give us a warning to keep eternal vigilence for guarding the integrity and independence of the judiciary.

Educational and Cultural Fields:

Corrupt practices are not confined to the administrative political, economic, civic and judicial spheres only. Their symptoms are visible to an increasing extent and degree deep into our social life. In the cultural sphere malpractices are reported in the matter of financial assistance in the form of grants and loans to educational and cultural organisations, in the sponsoring of various delegations to foreign countries, the award of prizes and gifts, the commissioning of writers and artistes, the

purchase of art treasures and other diverse activities. The columns of newspapers often claim to carry inside stories of factions in control over cricket, hockey and other national games. Even in the case of relief funds, memorial funds, defence funds and similar benefactions, to which lakhs and crores of rupees have been donated, one often hears doubts and speculations about the way the monies have been handled. Public anxiety has also been expressed over the funds of temples and other endowments.

Educational institutions which are supposed to produce public men of integrity and honesty, are today the subject of serious complaints, irregularities, intellectual dishonesty, party politics and the like. The spread of student unrest throughout the country is an indication of the unhealthy state of affairs in our academic institutions. The Santhanam Committee has rightly suggested an inquiry into the malpractices that may be prevailing in our universities and national institutions.[103]

Political Corruption: Nature, Extent and Scope:

Far too dangerous than corruption among Government servants is corruption at the ministerial and political level. Without ministerial and political corruption, corruption in services cannot flourish, and no measures to eradicate the latter would succeed unless some purity and integrity are restored in the political and ministerial circles.

Political corruption, in a technical sense, is the wilful exploitation of political office or opportunity for personal gain. The machinery of Government is manipulated

in the interests of predatory power groups in complete violation of public trust. It not only promotes crime; political corruption itself is crime. Undermining the public welfare for the advantage of the few and taking the people's money for illicit purposes by surreptitious means is "robbery" by whatever name it is disguised. If corrupt politicians and ministers are caught and adjudged solely on the serious social consequences of their frauds, they would easily receive the maximum penalty of the law. This seldom happens, as one writer has put it, "even the court-room feels the strength of the politicians' power".[104]

The ordinary manifestation of political corruption is the phenomenon of "graft". Graft is a comprehensive term covering a variety of irregularities. It involves the abuse of power in dealing with the resources of the Government in the interests of private profit. It is one of the more poisonous and destructive form of corruption. It may be said to be the worst of all in so far as it has a cancerous effect on the well-being of a nation. Any public act, observed Elliot and Merril,[105] may be considered from two points of view in order to ascertain whether or not graft is involved. First, if the act entails a specific abuse of power it is a definite instance of graft. The criteria which define abuse of power may be legal, customary or ethical. Second, if a definite profit is involved, the act is an example of graft. The profit may be either pecuniary or in the nature of special favours granted to the dispenser of the graft.

Corruption in the ultimate analysis is an attitude of mind, and largely the attitude of mind brought to bear upon the administration and the public life of the country by the political leaders and rulers of that country. So far as India is concerned, it must be painfully admitted that this attitude is one of "easy virtue of adjustable conscience". Politics which had been considered to be a spiritual mission and philosophic pursuit has today degenerated into a business proposition where unscrupulous and dishonest persons thrive at the cost of illiterate and ignorant masses. Eighteen years of absolute power has generated a baneful influence in the ruling party. There is a wide-spread impression that lack of integrity is not uncommon among ministers and that many of them have enriched themselves illegitimately, obtained good jobs and handsome incomes for their sons and relations through nepotism and influence, and have reaped other advantages inconsistent with any notion of purity in public life.[106] A former President of the Indian National Congress had said that Congressmen who were paupers in 1947 had become millionaires and multi-millionaires without having any ostensible sources of income.[107] The Santhanam Committee noted with deep concern ministerial lapses in this country and stated that ensuring absolute integrity on the part of ministers at the Centre and the States is an indispensable condition for the establishment of a tradition of purity in public services. The Committee regretted that while there are elaborate rules to ensure probity among officials, there are hardly any for ministers, legislators or political parties.[108]

It has now become a common feature of political life in this country to hear almost everyday some sensational charges and counter-charges of corruption being made on the floor of the legislature, in the press, or from public platforms by ministers and ex-ministers, opposition leaders and dissident partymen. It may be possible that in many cases these charges are unfounded, malicious or made out of spite, but in most cases, whether true or untrue, no serious attempt is even made by the authorities to properly inquire into them and clear the confusion in public mind. In a memorandum submitted to the President of India by leaders of opposition parties in Parliament requesting a public inquiry in the case of a former Union Finance Minister, they observed:[109] "Those in authority, especially ministers who are in charge of administering the country, should not only be above corruption, but the people at large must have convincing proof that they are, indeed above corruption. Only in that way can our democracy succeed and the principles of natural justice maintained in our country."

Allegations of political - criminal symbiosis involving even ministers are occasionally heard in legislatures of some of the states.[110] Of course, one cannot uphold the tendency among some legislators to hurl charges indiscriminately without producing conclusive evidence. As Lord Denning has correctly observed, "Public men have become more vulnerable since scandalous information is a marketable commodity which has buyers". But, if this tendency on the part of legislators is bad, the tendency on the part of authorities to brush aside these allegations without proper inquiry, probably to safeguard

the prestige of the party, is equally undesirable. This tendency can be curbed considerably by public condemnation of the member who makes such charges, after they have been found baseless on a proper inquiry. But when it is made to appear that people in power are not interested in taking action on such charges, and are prepared to sacrifice ethical principles of public administration for the sake of political expediency, the general impression created is that possible culprits are being shielded. This inability of those in authority to assert themselves has led to a cynical attitude towards corruption in higher quarters and has created an atmosphere in which people are inclined to remain self-complacent towards increasing moral vacuum.

The liaison of political leadership with big business is an unfortunate development in India that has its roots in the National Movement. Rich businessmen contributed money liberally to the National Movement and the Congress Party. This patriotic investment has afterwards resulted in making the party in power vulnerable to the influence of their wealthy patrons. Some of the dishonest politicians when they got power indulged in graft and other malpractices in collusion with big business houses and carried on their nefarious activities with varying degrees of subtlety. Quite unashamedly some of them got their relations and acquaintances appointed to high-salaried jobs in the Government or, by abusing their power, got them lucrative jobs in business establishments. If the former category endangers the efficiency of the administration, not to speak of lowering the integrity and morale of public life, the latter category creates dangerous inroads

for the business community into the political set-up through which it very often tries to take undue and irregular advantage.

The public belief in the prevalence of corruption at high political level has been strengthened by the manner in which funds are collected by political parties, especially at the time of elections. Actually no political party can be said to be entirely free from the influence of interests seeking to obtain some concessions in legislative enactments and administrative action. Such gifts are in a sense investments for the donors for they get back their original money and a big profit through contracts, loans, subsidies, licences, quotas, privileges, and so on. For the businessmen, contributions to the funds of political parties is insurance against risks of loss of business by refusal of permits or licences and legislative interference in their profit-making activities. This system of financing elections is not 'bribery' in the legal sense, though the practice is normally reprehensible.[111] It poses serious ethical problems to the legislators and the ruling party in particular. The Santhanam Committee has done well to recommend a total ban on contribution by private companies to party funds and an obligation on parties to disclose the sources of their funds and an audited statement of accounts.[112] A statement laid on the table of the Lok Sabha on February 17, 1965 by the then Finance Minister stated that of the 1 crore and 15 lakhs contributed by companies to political parties from the middle of 1961 to the middle of September 1964, the Congress received 98 lakhs and the Swatantra Party, 15 lakhs, while the remaining small

amount went to the other parties. The Congress received contributions from 31 companies and the Swatantra from 16 companies.[113] Apart from this, large numbers of M.Ps are individually helped by certain big business houses. Business concerns thus play a direct part in political finance and in the process corrupt the political apparatus of the Government in the Centre and in the States.

In re, Indian Iron and Steel Co.Ltd., Justice P.B. Mukherjee of the Calcutta High Court has pointed out the inherent dangers involved in political donations by companies. The company sought the approval of the Court for the necessary alteration of its Memorandum of Association to enable it to contribute to political funds. The reason put forward by the company in this respect is revealing: A.I.R. 1957 Calcutta 234 at p. 235:-

> "The prosperity of the Company's business is very much dependent upon the industrial policy of the Central Government of the day. Further, the Company's principal business being the manufacture of iron and steel, the sale and distribution of the Company's products, the prices to be received by the company for the same and the manufacturing and other policies to be followed by the company are all subject to and closely related to the requirements of the Central Government with which the company has intimate dealings, transactions and connections ..... In order to enable the company to carry on its business more efficiently it is necessary that the company should be enabled to contribute to the funds of political parties which will advance policies conducive to the interest of industries in general and of the company in particular....."(emphasis added).

Is this not an attempt on the part of industrialists to have legal sanction to bribe the Government of the day, to induce policies that will help them in their search for profits?

As Justice Mukherjee has rightly remarked in the course of his Order in the above reference,

> "To induce the Government of the day by contributing money to the political funds of political parties, is to adopt the most sinister principle fraught with grave dangers to commercial as well as public standards of administration ..... Persuasion by contribution of money lowers the standard of administration even in a welfare state of democracy. To convert convictions and conscience by money is to pervert both democracy and administration".
>
> "Its dangers are manifold. Joint Stock Companies are not intended to be adjuncts to political parties and possible sources of revenue for these parties ..... Secondly, it will induce the most unwholesome competition between business companies by introducing the race, who could pay more to the political funds of political parties ..... Thirdly it will mark the advent and entry of the voice of the big business in politics and in the political life of the country ..... The tune of political life, therefore, is liable in the long run to become the tune of the big trading companies and concerns. That will be bad both for business and for politics. It will be alike bad for public life as well as commercial life." (A.I.R.1957 Calcutta 234 at pp. 235-236).

While the Indian law does not prohibit contribution to political funds or political parties, in America, the American Corrupt Practices Act as amended by the Taft Hartley Act expressly declares such contribution to be unlawful. The learned Judge had therefore suggested that:

> "As the number of applications here (in India) are becoming more and more numerous by which the companies are trying to divert commercial funds to political purposes it is essential in the interest of both commercial and public standards to have immediately similar legislation on the subject to keep the springs of democracy and administration reasonably pure and unsullied and before it is too late to control the dangers and mischiefs inherent in the situation".

It is therefore certain that we will not be able to build the edifice of an honest and progressive democracy unless all political parties learn to practise the rules of the game

and eschew corrupt practices in raising funds as well as in conducting elections. Meanwhile there is urgent need for legislative prohibition of company contribution to political parties and political funds.[114]

Another form of political corruption is what is called "electioneering bribery" or exercising undue influence at an election. Writing on the subject, a critic of public administration observed:[115] "The practice consists in ministers going to a constituency on the eve of an election, then and there promising all kinds of administrative favours to that constituency, and thus influencing the voters on behalf of their candidate".

A complete list of ministerial lapses in India is difficult to obtain. No proof of such lapses can, in the nature of things, be available in a court of law, not even in an administrative tribunal, much less before a party tribunal. The beneficiaries of their favour complain about them in confidence but seldom would come forward to complain formally or substantiate any complaint. However, of late, as a result of the untiring efforts of some opposition leaders in Parliament some 'hidden episodes' and 'untold stories' involving influential ministers in the Centre and and the States have come to public notice. A recent book on "Political Corruption in India"[116] written by a member of Parliament and a journalist gives an impressive array of important corruption cases in the political sphere in India after Independence. The Das Commission Report on the former Punjab Chief Minister, the late Mr.Pratap Singh Kairon,

is another important document judicially exposing the unhealthy state of affairs existing at the ministerial level.[117] There is at least one reported case also in which a Minister of the former State of Vindhya Pradesh was punished by the Supreme Court for bribery and corruption.[118] In this case the minister for Industries of the State of Vindhya Pradesh was caught red-handed for accepting a bribe of Rs.25,000/- in return for granting mining rights for the Panna Diamond Mining Syndicate.

Mahatma Gandhi wanted the ministers and the legislators, like Caesar's wife, to be above suspicion. He wrote in 'Harijan' on April 23, 1938:

> "The ministers and the legislators have to be watchful of their own personal and public conduct. They have to be, like Caesar's Wife, above suspicion in everything. They may not make private gains either for themselves or for their relatives or their friends. If the relatives or friends get any appointment, it must be only because they are the best among the candidates, and that their market value is always greater than what they get under the Government. The ministers and the legislators have to be fearless in the performance of their duty. They must always be ready to risk the loss of their seats or offices."

It is distressing to note the record of our legislators, ministers and party officials, who are supposed to be the disciples of the Father of the Nation, during the last twenty years of the life of Independent India. An illustrative list of cases of political corruption drawn from the limited materials available is examined here with a view to find out the prevalence of the evil in India today.

The tendency of the authorities to overlook or sidetrack political corruption on the ground of personality and prestige, party interests and exigencies of the situation,

has come in for serious public criticism and the demand for regular inquiries into charges of corruption against ministers became irresistable. In a memorandum presented to the President of India on July 13, 1963 the opposition parties in Punjab levelled twenty allegations against the late Mr. Pratap Singh Kairon, former Chief Minister of Punjab and requested a public inquiry.[119] He was charged with having abused his position as head of the State administration to help his sons and other members of his family to amass wealth. A one-man Commission of Inquiry consisting of Mr. S.R.Das, a former Chief Justice of India, was set up on November 1, 1963. The publication of the Commission's report forced the late Mr. Kairon to quit office. He was later murdered by an 'unknown' assassin on his way from Delhi to Punjab and people suspect it as a case of 'political murder'.

The Das Commission had classified the proven charges against the late Mr. Kairon into three categories: (i) abuse of influence and power by the former Chief Minister for his own benefit; (ii) similar conduct personally and/or by or through his colleagues or subordinates to help his sons or relations in their business transactions; and (iii) exploitation of the late Mr. Kairon's position and power by his kith and kin for securing undue favours or advantage from Government officials in their business dealings.[120]

There was only one charge in the first category. It was that the late Mr.Kairon had made use of the services of a Government doctor for 45 days while on an electioneering

tour of the State for the ruling party. The Commission found the conduct of Mr.Kairon "reprehensible" and "unbecoming" of a Chief Minister.[121]

There were three charges involving abuse by the Chief Minister of his influence and powers to help his sons and relatives to amass wealth. These consisted of acquisition of two Cinema houses and a cold storage plant by the former Chief Minister's sons and the purchase by the Government of surplus lands of relatives of Mr. Kairon. The Commission felt that several "illegalities and irregularities were committed with the full knowledge" of Mr.Kairon and that if he did not actually direct their commission, he certainly connived at them".[122] The Commission also observed that Mr. Surinder Singh had exploited his father's position to win favour from officials.[123]

In the third category was listed acquisition by the late Mr. Kairon's sons of three cinema houses, a spinning mill and an automobile sales agency by abusing the position of the former Chief Minister. The Commission found that Mr. Surinder Singh Kairon had taken "the fullest advantage of his position as the son of the Chief Minister and has freely exploited the influence and power of his father in securing the sales agency and in developing its business and increasing its sales in diverse ways and in delaying the filling of sales tax returns or marking of the voluntary deposits without any effective step being taken against him and in getting away with a paltry penalty wholly inadequate to his lapses".[124] The Commission also referred to a series of irregularities committed by some ministers of

of the Punjab Government and certain officials who, voluntarily or otherwise, responded to the wishes of their political boss and showed undue favours to his sons in the hope of pleasing him or earning promotions.

In view of the contention indirectly raised before the Commission that a minister would not be responsible for the misdeeds of any person other than himself, the following observations of the Commission in this respect are particularly noteworthy.[126]

> "The Commission is free to concede that a father cannot legally or morally prevent his sons from carrying on business, but the exploitation of the influence of the father who happens to be the Chief Minister of the State cannot be permitted to be made a business of. Such exploitation cannot possibly be legitimate business and the father's influence and powers cannot be permitted to be traded in. In the delicate situation in which S.Pratap Singh Kairon, holding such an exalted high office, was placed, as a result of the activities of his sons and relatives and Government officials, even assuming he personally had not lent a helping hand in relation to them, the least he could do was to give a stern warning in private and, if necessary, publicly, to his sons, relatives, colleagues and subordinate officers against their alleged conduct, even if such conduct had not been proved to be true. There is no getting away from the fact that S.Pratap Singh Kairon knew, or had more than ample reason to think or suspect, that his sons and relatives were allegedly exploiting his influence and power. But as his own affidavit shows, he made no enquiry, gave no warning to anybody and took no steps whatever to prevent its recurrence, but let things drift in the way they had been going, assuming he had no hand in it. In the premises he cannot now be heard to say that he had no knowledge of any wrongful conduct on the part of his sons, or relatives, or the officers under him. The allegations stared him in the face; he paid no heed to them. He cannot now plead ignorance of facts. In view of his inaction in the face of the circumstances hereinbefore alluded to, he must be held to have connived at the doings of his sons and relations, his colleagues and the Government officers.

> This is the true position as the Commission apprehends it. It will be for the authorities to consider and decide what consequences follow from such connivance".

Following the "Kairon Case", opposition leaders in the Orissa Assembly submitted memoranda to the President, Dr. S. Radhakrishnan, and made public statements demanding inquiries against the former Chief Minister of Orissa, Mr. Biju Patnaik, and his successor, Mr. Biren Mitra, for alleged help to their wives in amassing wealth by doing business with the Government which they headed at the time. It was contended that the former Chief Minister and some of his colleagues had abused their positions and virtually entered into business transactions with the Government of which they were a part and enriched themselves in the process. This was accomplished by doing business with Government in the name of firms really owned by them but nominally managed and run by their wives.[126]

Following submission of the memoranda, the Union Home Minister directed the Central Bureau of Investigation to make a "preliminary inquiry" into the charges. The C.B.I. report established a prima facie case, it is alleged.[127] On the basis of the findings of the C.B.I. Mr. Patnaik and Mr. Mitra were asked to offer their "explanations". A sub-committee of the Union Cabinet is reported to have found improprieties in several transactions and lack of normal standards of public conduct. The sub-committee is also reported to have felt profound concern at the abuse of authority by leaders of the State Government.[128]

After this indictment, Mr. Patnaik and Mr. Mitra were "advised" to step down from their respective offices which they did. Apart from this political action in the form of a mild- rebuke and a temporary loss of office, the authorities did not take any legal action or institute a judicial inquiry, probably because of an ill-conceived anxiety to protect the ruling party's interests in the State.

Yet another instance of ministerial lapse and consequent loss of the tax payers' money is provided in the Mundhra deals that has been the subject of a Commission of Inquiry. Mr. Mundhra, known for his dishonesty and manipulation in business, was reported to have made available large sums of money to the ruling party and cleverly cashed in on his acquaintance with leading men in authority. He was able to get the Life Insurance Corporation to invest nearly Rs.15 million in six of his concerns, primarily to help him out of a precarious financial situation. The nature of these shady transactions, in which a large sum of public money held in trust by a statutory body like the L.I.C. was misused to bolster up the questionable business activities of a "known speculator", is thoroughly investigated at the instance of the late Mr. Feroze Gandhi by a Commission of Inquiry consisting of Mr. M.C. Chagla.

According to its terms of reference, the Chagla Commission was to inquire whether the purchase of the shares was in accordance with normal business principles or practice,

whether it was proper, and who were the persons responsible for the purchase. The Chagla Commission held the then Finance Minister, Mr.T.T.Krishnamachari, responsible for the acts of his subordinates resulting in the disastrous investment of L.I.C money in various concerns managed by an individual known for his doubtful reputation. Finding that the transactions were hustled through hurriedly Mr. Chagla concluded that "there was some compelling reason, some motivating force" behind the precipitate action. Mr. Krishnamachari's plea that "his subordinates did not reflect his policy or acted contrary to his wishes or directions" was not accepted by the Commission, which held him fully responsible for the deals, both Constitutionally and factually.[129] Eventually, Mr. Krishnamachari, who was subsequently taken in the Union Cabinet, resigned for the second time in ten years, when the then Prime Minister decided to refer to the Attorney-General certain corruption charges against him made by the opposition parties in Parliament through a memorandum to the President.[130]

'left the Union Cabinet. It is interesting to note that Mr. Krishnamachari,

The 'Serajuddin affair' involving a former Union Minister, Mr. K.D. Malaviya, is another known case of political corruption. Messrs Serajuddin & Co. are a firm of mine-owners operating in Orissa. Between 1949 and 1956, Mr. Serajuddin had been financing politicians belonging to the ruling Congress Party in Orissa and elsewhere. In 1956, in the course of a search in connection with cases of evasion of income-tax and customs duty, the private account books and correspondence of Mr. Serajuddin fell into the hands of the authorities. In 1963 certain

newspapers in Calcutta reported that the documents seized from Mr.Serajuddin contained entries showing payments made and gifts given to some Central Ministers.[131] The indefatigable Mr. Dwivedy M.P. demanded in Parliament investigation of the incriminating entries. Meanwhile, in a meeting of the Congress Parliamentary Party Executive, the then Minister of Mines and Fuel, Mr. K.D.Malaviya, was reported to have confessed that he had obtained from Mr. Serajuddin, a financial contribution of Rs.10,000. Besides this, Mr. Biren Mitra, the then Chief Minister of Orissa was also reported to have received Rs.2,00,000 from Serajuddin & Co. The issue got another dimension when the 'lok Sevak' of Calcutta reported that the Ministry of Mines and Fuel is favouring the already maligned Serajuddin & Co., in the matter of a barter deal licence.[132] It was contended by Mr. Dwivedy that after having received the money from Mr. Serajuddin, the firm was sought to be favoured in more than one way, first by being allowed to mine the ore in contravention of the Industrial Policy Resolution, and secondly, by being permitted to export the product in exchange for machinery which it would sell, apparently at a profit, to the Oil and Natural Gas Co mission.[133]

Ultimately on May 9, 1963, the Prime Minister announced that on the advice of the Attorney-General who had examined the papers seized from Serajuddin & Co., he had requested the Chief Justice of India to suggest a Supreme Court Judge for conducting "a full inquiry" into the entries in the Serajuddin books relating to Mr. Malaviya. On August 17, the Prime Minister announced in the Lok Sabha that following

inquiry by Mr. Justice S.K.Das he had accepted Mr.Malaviya's resignation as Minister of Mines and Fuel. Neither the Das Report nor the incriminating entries in the books of the impugned firm was ever published, and from what was disclosed by the Prime Minister in the Lok Sabha, Mr. Justice Das' Report was partly favourable and partly unfavourable to the outgoing Minister of Mines and Fuel.

Two important inquiries are now being conducted, one against Bakshi Ghulam Mohamed, the former Chief Minister of Jammu and Kashmir, and the other in respect of certain transactions by the Ministry of Iron and Steel which are alleged to have involved the wrongful issuance of pre-import licences to the Amin Chand Pearelal Group of firms resulting in a loss of foreign exchange earnings of about Rs.24 million. The former inquiry is being conducted by an ex-judge, Mr. N. Rajagopala Ayyangar, and involves, inter alia, charges of corruption, abuse of authority and adoption of questionable methods in state administration by the former Chief Minister.[134] The latter is a comprehensive inquiry on certain steel transactions of the Government being conducted by a former Chief Justice of the Supreme Court, Mr. A.K. Sarkar. The critical reference made by the Public Accounts Committee of Parliament in its fiftieth report about the improprieties in the steel transactions and the subsequent demand in Parliament for a thorough investigation of the matter gave rise to the appointment of the Sarkar Commission.[135]

A discussion on political corruption would not be complete without a reference to the "Mudgal episode", which according to Messrs Dwivedy and Bhargava[136] "is

important in being the first proven instance of a Member of Parliament having been paid to use his position for furthering certain business interests." Bribery of members of Parliament and State Legislatures and abuse of political power by elected representatives strike at the very root of democratic institutions and bring democracy itself into ridicule.

The charge against Mr. Mudgal, Member of Parliament and publisher of a couple of periodicals in Bombay, was that in return for a consideration he had used his position as a Member of Parliament to create the necessary atmosphere for getting support to the objectives of the Bombay Bullion Association. A Committee of Parliament enquired into the matter and found misuse of his position as Member of Parliament for ulterior purposes. "The services to be rendered by Shri Mudgal" observed the Committee,[137] "were to include putting of questions in Parliament, moving amendments to the Forward Contracts(Regulation) Bill and arranging interviews with Ministers etc." The Committee held that Mr. Mudgal's conduct was derogatory to the dignity of the House and inconsistent with the standards expected of a Member of Parliament. Subsequently, Parliament adopted a motion moved by the Prime Minister that, in the light of the Committee's findings, Mr. Mudgal deserved expulsion from the House."

Commenting on the Mudgal episode, M/s. Dwivedy and Bhargava wrote: "If the Mudgal episode had led to realization of the danger of a liaison between business and politics

it would have been an eye-opener. But in practice it proved to be a flash in the pan ..... The Government and the ruling party which had rightly taken a very serious view of Mr.Mudgal's conduct, unfortunately did not keep it up when even graver transgressions were committed by politicians holding even more important positions."

According to Ronald Wraith and Edgar Simpkins,[138] there is an "illicit glamour" about ministerial corruption, which causes it to be talked about more than it perhaps deserves. While this is true, it is only natural to magnify and exaggerate the incidence of corruption as and when it is condoned or concealed. And in India, unfortunately, "the practice had been to single out the small fry in the crusade against corruption while allowing politicians the benefit of doubt. The accent had been on weeding out corruption in the admin stration without touching its mainly political sources"[139].

If corruption is to be curbed, corruption among ministers and politicians should be tackled first. Ministers hold the key. They create the atmosphere and the standards. For, if they are above board, they can control and discourage corruption among their subordinates, friends and proteges. An honest Minister is a formidable deterrent to corruption in his colleagues or officials. A fairly large section of the civil servants feel, and not very unjustifiably, that without Ministers' and politicians' connivance, if not active participation, there cannot be such growth in corruption

in the country as has taken place. A review of the instances of political corruption discussed above supports and substantiates this view.

In examining the social climate that would be conducive to the restraining of corruption, the Santhanam Committee had rightly emphasised the need for Ministers and legislators observing codes of conduct that would place them above suspicion. It is essential that the balance sheets including incomes and expenditures, assets and liabilities of Ministers, Central and State, should be published annually. It will be more graceful if the Ministers do so voluntarily. Otherwise, they should be obliged by law to do. The wholesome practice in a Parliamentary Democracy that ministers ought not to enter into any transaction whereby their private pecuniary interests might even conceivably come into conflict with their public duty, must be accepted as a binding principle of public life. The special machinery of a 'National Panel' which the Santhanam Committee had suggested[140] for enquiring into charges against ministers is intended to deal with situations, which in the past, have not been either promptly or satisfactorily dealt with by the authorities. There would be little need for an outside agency of any kind to determine the integrity or otherwise of ministers if, as a rule, those who had been charged with abusing their power and office for personal or party gain, had chosen to vindicate themselves openly or followed well-established parliamentary conventions and resigned their offices. Ministerial corruption

is not often of the kind that can be judicially investigated and punished. A corrupt minister can also be excluded by political action by the High Command, who can demand his resignation or reconstitute the cabinet without him, and thereby avoid proving his guilt to the satisfaction of a hierarchy of courts and risk failure. The prospect of exposure in the legislature, Parliament, Press etc., must continue to serve as the main restraint on ministerial misdemeanours. The present tendency of identifying the administration wholly with the services for purposes of dealing with corruption is in any way unjustified and even dangerous.

Checking Corruption: An Examination of the Law and Procedure:

Offences like bribery and corruption have now become the subject-matter of a special and important branch of Indian Criminal Law. Apart from Chapter IX and Chapter IX-A of the Indian Penal Code discussing offences relating to public servants and corrupt practices in elections respectively, there is now a separate legislation, The Prevention of Corruption Act, 1947, designed to meet the increasing manifestation of the evil in the services.

The Prevention of Corruption Act, 1947 creates only one substantive offence, namely, "criminal misconduct" which is defined in section 5(1). The main object of the Act was to deal with the kind of "misdemeanour in which Government servants or public officers with no ostensible means of support or inadequate support are living obviously above their income and are in a position to invest in property,

which it appears on the face of it to be impossible that they should have had the money to acquire or at any rate that they should have got those resources honestly".[141] It was felt that it was difficult to pin down, because in such cases all that the Government or the police could find was that the Government servant could have no ostensible source, which could be accounted for as the basis of extravagant expenditure. No specific action could be taken against him or proved in the way of accepting a bribe or obtaining the money by corrupt means. The object of section 5 was to make it possible to detect and punish officers who had "managed to evade detection in that way".[142] Thus, a public servant in possession of a sudden accretion of wealth was deemed guilty of the offence of criminal misconduct, unless he could prove that the accretion was honestly obtained.[143] The rule of evidence in sub-section (3) of section 5 of the Act enabled the court to draw the legal presumption of criminal misconduct against the public servant, once the prosecution established assets in his possession disproportionate to his known sources of income.[144] The Anti-Corruption Laws (Amendment) Act, 1964 however changed the rule of evidence in this regard by making possession of disproportionate assets by a public servant to be a substantive offence by itself. (Vide new clause (e) to section 5(1) of the Prevention of Corruption Act). The burden on the accused seems now to be lesser than that used to be under the old law. Previously the accused had to <u>prove</u> that the apparent disproportionate assets were not acquired through corrupt means; under the amended law he

can perhaps discharge the onus by giving only a satisfactory account.[145]

For the investigation and trial of corruption cases the special provisions of the Prevention of Corruption Act, 1947 and the Criminal Law Amendment Act, 1952, are applied in preference to the general rules of procedure. Further, the former Act introduced two entirely new features in the administration of criminal justice in this country. By section 7 thereof, it is provided that, subject to certain conditions, when any person is charged with an offence punishable under Section 161 or Section 165 or Section 165A of the Indian Penal Code, or under Section 5 of the Act (Prevention of Corruption Act, 1947), such person shall be a competent witness on his own behalf or on behalf of any other person charged together with him at the same trial. Secondly, in the matter of proof of these offences, the Act has created two special presumptions which modified the rules of evidence laid down in section 101 and section 102 of the Indian Evidence Act. Thus Section 4(1) of the Prevention of Corruption Act provides that where it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 161 or, as the case

may be, without consideration or for a consideration which he knows to be inadequate. Section 4(ii) of the Act creates a similar presumption in respect of Section 165-A of the Penal Code.

Furthermore, in respect of the offence of criminal misconduct (Section 5(1)(a)) where the fact is made out that the accused person or any other person on his behalf is in possession of pecuniary resources or property disproportionate to his known sources of income for which the accused person cannot satisfactorily account, the Court has to presume, unless the contrary is proved, that the accused person is guilty of criminal misconduct in discharge of his official duty.

Explaining the justiciability and constitutionality of these statutory presumptions under Section 4 of the Prevention of Corruption Act, the Supreme Court observed in Ramdas Vs. State of U.P[146]

> "Presumably the Legislature felt that the evil of corruption among public servants which posed a serious problem had to be effectively rooted out in the interest of a clean and efficient administration, and it realised from the experience in criminal courts how difficult it is under the normal rules of evidence and proof to establish the charge of bribery or corruption beyond a reasonable doubt. Therefore, in order to achieve the object of eradication of corruption from amongst public servants, it has decided to enact Section 4 of the Act which lays down that as soon as the condition precedent prescribed by it is satisfied, the Court shall be bound to raise the statutory presumption as to the motive of the accused in accepting or obtaining any gratification other than legal remuneration."

It is true that this principle of statutory presumption revolts against the accepted rule of criminal jurisprudence on the burden of proof in criminal cases, viz., that it is the duty of the prosecution to prove the accused's guilt beyond a reasonable doubt. It is also true that it puts the accused charged of corruption or criminal misconduct in a disadvantageous position as compared to persons charged of other offences in the Penal Code. The benefits provded to an accused under Section 101 of the Evidence Act and Section 342 of the Code of Criminal Procedure are denied to him. But, as the Supreme Court observed in Emden Vs. State of U.P. such modifications of the rule of evidence might become necessary in the interest of a clean and efficient administration. A man who, by reason of his education or social status, secures a position of special confidence in the public services owes a special responsibility to the State and Society. If such a man abuses the confidence reposed in him by unsuspecting citizens, it is the Society which suffers most. Such men can, by clever manipulation commit loot overnight of the property of hundreds of thousands of people. They are indeed more dangerous to the society than an ordinary thief or a decoit for, in the latter case the victim usually knows about his enemy and his hostile attitude. White collar crimes of the above nature cut at the very root of valuable social institutions and hence differential treatment is necessary and justified.[147]

Though a complete reversal of "presumption of innocence" is inconsistent with our notions of democracy

and individual rights and therefore not justified, an extension of the modified rules of evidence may be considered necessary in respect of other crimes by public servants and people holding trust in Society.[148] Such modifications are increasingly adopted now by both the legislatures[149] and approved by the judiciary.[150]

The substantive offences created and the procedural changes effected in the law relating to corruption by the Prevention of Corruption Act, 1947 were soon found to be insufficient to meet the growing evil. Under Section 7A of the Act the provisions of the Code of Criminal Procedure, 1898, were modified in their application to any proceeding in relation to an offence punishable under sections 161,165 or 165A of the Penal Code or under section 5 of the Prevention of Corruption Act. Even this amended procedure was highly involved and necessarily slow. Therefore in 1952 The Criminal Law Amendment Act was passed to further amend the I.P.C and Cr.P.C. with a view to provide for a more speedy trial of corruption cases. Under section 6(i) of this Act, the State Government was empowered to appoint as many Special Judges as may be necessary for such area, or areas as may be specified by the Government to try corruption cases. Additional powers were also conferred on the Special Judges modifying to that extent the provisions of the Code of Criminal Procedure (vide section 8 of the Amendment Act, 1952) with regard to cognizance, trial, conviction and sentence of persons accused of the said offences. The law was again amended in 1958 and 1964 by the Criminal Law Amendment Act,

1958 and the Anti-Corruption Laws (Amendment) Act, 1964.

Another important piece of legislation passed for fighting corruption is The Delhi Special Police Establishment Act, 1946 under which a special police force was constituted for the investigation of certain offences including corruption (Appendix V). The superintendence and administration of the Delhi Special Police Establishment vests in the Central Government. It is now one of the major divisions of the newly constituted Central Bureau of Investigation.

Apart from the above statutes, corruption and maladministration in the services are dealt with by the Government servants' Conduct Rules both at the Central and State Government levels. A good deal of instances of official misconduct are handled by departmental authorities according to the provisions of the Government Servants' Conduct Rules and the regulations made by the various Departments and Ministries from time to time. In a properly run administrative system, departmental action would largely meet the needs of the day. But in other situations departmental action would only tend to delay issues, find technical justifications for inaction and aggravate corruption. In India the problem of corruption is so much involved with related lapses like delays in dealing with public business, inefficiency, red tapism, arbitrary use of power, and even faulty or unjust executive processes that an integrated approach in the administrative and legal spheres is called for.[151]

The Committee on Prevention of Corruption appointed by the Government of India with Shri K.Santhanam, M.P., as Chairman reviewed the then existing instruments for checking corruption in the Central Services.[152] It felt that the prevailing vigilance arrangements in the Government were inadequate and required important modifications in several directions.[153] The committee observed that the Administrative Vigilance Division in the Central Ministry of Home Affairs and the vigilance units in the various ministries and departments functioned "substantially in an advisory capacity" and had certain inherent drawbacks. It, therefore, recommended the establishment of a Central Vigilance Commission enjoying, by convention, the same measure of independence and autonomy as the Comptroller and Auditor General or the Election Commissioner or the Union Public Service Commission. The Government of India accepted this recommendation and set up the Commission under a former Chief Justice of the Mysore High Court. A detailed note on the present vigilance organization in the Central Government is provided in Appendix VI.

It was hoped that the terms and conditions of the appointments to the Vigilance Commission would be such that the Commission could become an effective deterrent to any attempt at suppressing action in cases of corruption brought to light. It was also thought that the creation of such a vigilance organization would restore public confidence in the Government's determination to eliminate corruption and lack of integrity speedily and effectively.[154]

But these fond hopes could not be realized in any appreciable measure due to various reasons. According to the Government decision the functions of the Central Vigilance Commission, like its predecessor, were also advisory in the constitutional and legal sense. Secondly, complaints of "political graft" were specifically excluded from the purview of the Commission. After about three years' of experience as Central Vigilance Commissioner Mr. Rau, the first Vigilance Commissioner, is reported to have come to the conclusion that without tackling political corruption it was not possible to root out the evil from the Civil Services.[155]

The Central Vigilance Commission, as conceived by the Santhanam Committee, provided for a branch to deal with general complaints not connected with corruption. The absence of a machinery for appeals other than inside the hierarchy and of a suitable machinery for redress of public grievances, according to the Committee, contributed to the growth of an impression of arbitrariness on the part of the executive and had resulted in a phenomenal increase in the number of 'peddlers of influence'. The Government have recognized the importance and urgency of providing a machinery for looking into the grievances of the citizens against the administration and for ensuring just and fair exercise of administrative powers. But it did not want to burden the Central Vigilance Commission with these activities and decided to create a separate machinery for it.[156] An Administrative Reforms Department was accordingly set up to scrutinize and improve administrative

procedures and to work out details of the machinery for looking into the grievances of the citizens against the administration and for ensuring just and fair exercise of administrative powers. The Administrative Reforms Department in the Union Home Ministry, in consultation with the Ministries concerned, set up teams to review the procedures of the Departments of supply, Technical Development, Import-Export Control, C.P.W.D. etc., with a view to spot out and rectify points of corruption, minimise delay and facilitate quick and efficient disposal of business for public convenience.

These changes in the institutional set up did not bring about the desired result and the evil of corruption continued unabated. The need for a comprehensive enquiry and radical reforms were so deeply felt that on 5th January, 1966, the Government appointed a high powered body, the Administrative Reforms Commission, under the chairmanship of Mr. Morarji Desai. Mr. Hanumanthayya later took over the chairmanship from Mr. Desai. According to its terms of reference, "the Commission will give consideration to the need for ensuring the highest standards of efficiency and integrity in the public services, and for making public administration a fit instrument for carrying out the social and economic policies of the Government as also one which is responsive to the people." The Commission submitted an interim report to the Government on the "Problems of Redress of Citizens' grievances" in October, 1966 recommending an Ombudsman-type institution to deal with citizens' grievances and complaints against officials and ministers.

The plea for the institution of a high-level standing tribunal endowed with statutory powers and completely independent of the executive to tackle the problem of corruption was raised several times before by administrators and public men.[157] Writing on the need for an Ombudsman in India for eliminating corruption and for providing even distribution of administrative justice, a Bombay journalist wrote succinctly in his recent book:[158]

> "We have our Courts that take several years to establish a case of corruption and very often after several years of litigation a dismissed civil servant, widely believed to be corrupt, gets himself reinstated in service, on the basis of some technical lacunae, with a huge sum awarded against the Government as backlog of wages. We have the legislatures that find themselves helpless in the face of a well-entrenched party majority till a commission of inquiry comes around and declares a Minister guilty. We have our Parliamentary questions which only succeed in getting from the Government what is already known and keeping away any damaging information till it is forced to reveal it because of some leakage somewhere. We have had Pandit Nehru looking into charges personally like a grand arbiter and, as later events have proved, shielding the guilty through a false sense of loyalty to associates and friends. We have had party bigwigs trying to decide issues, not surprisingly to the party's advantage. The ritual of 'taking up' and 'dropping' charges has gone on far too long to be tolerated any more. In such a confused situation one would sympathize with Mr. Patnaik who hit upon the mass meeting idea to decide issues of corruption which was perhaps in disuse ever since Antony and Brutus offered their versions to the Roman crowd after the death of Ceaser. Finally, we are recommended to have a national panel which, if set up, will be hardly different from the Congress Party's panel of lawyers - the chief difference being that in the one the initiative to act was with the party while in the new set up the initiative would be with the President which, under our constitutional set up, would mean the Government."

In the existing circumstances in this country, the individual, if he is not a member of some organised group or well-placed in life, has very little chance to get his complaints investigated and grievances redressed. The position has been well summed up by Mr. A.N.Jha, a senior I.C.S. officer in his foreword to the syndicate study of the National Academy of Administration, Mussorie.[159] He wrote:

> "The fact remains that the existing remedies against abuse of authority by the administration, particularly in its lower echelons, are not available to the common man, for whom the concept of equality before the law and social justice have at present little practical significance or value. With the ever-increasing scope of its activities and the consequent inevitable expansion of the bureaucracy, which, in its turn, at least in the initial stages, must result in placing many persons in positions of responsibility far beyond their capacity to shoulder, it is important that the Welfare State should provide some machinery for dealing promptly and expeditiously with cases of abuse of authority affecting the common man whether he be a poor cultivator or a low-paid public functionary who has neither the resources nor the influence needed for obtaining redress from the existing forums."

The Administrative Reforms Commission also in its interim report examined the existing safeguards for the citizen, assessed their efficiency and recommended an "Ombudsman" for India. According to the Commission the answer to the public outcry against the prevalence of corruption, the existence of wide-spread inefficiency and the unresponsiveness of administration to popular needs, lies in the provision of a machinery which will examine such complaints and sift the genuine from the false or the untenable so that administration's failures and achievements can be publicly reviewed in their correct perspective.

Even from the point of view of protection to the Services, observed the Commission,[160] such an institution is necessary for projecting their image on the public mind, in its true character and for ensuring that the average citizen is not fed on prejudices, assumptions and false notions of their quality and standards.

The Commission has referred to the recent climate of recrimination and charges and countercharges made against persons in authority and stated that a suitable institution independent of the executive should be set up soon to create confidence in the people and to sustain and foster democracy. In the Commission's view an honest and responsive administration was fundamental and basic to the functioning of a democratic Government. Especially when the State was committed to a policy of socialist development with an enlarging public sector, it thought, adequate built-in safeguards were necessary against encroachment by the administration on individual liberty. The citizen should be doubly assured that wrongful use of discretion by ministers and officials will not go unpunished. At the same time the machinery and procedure suggested should be such that the honest will have nothing to fear. The Commission was not impressed by the argument that regulatory check on the actions of the executive in the discretionary field will lead to serious delays in developmental activities or will promote a feeling of demoralization in, or have a cramping effect on the administration.

The Commission further said:[161]

> "We strongly feel that this malaise in administration mainly arises more from a sense of frustration or lack of appreciation of good work done and from an exaggerated image of corruption, inefficiency and lack of integrity current in the public mind than from actual investigation into complaints submitted by citizens. We have every reason to believe that the working of such an institution (Ombudsman) will in the long run rectify and thus restore the correct image of the administration, create public confidence in its integrity, and thereby promote, rather than impede, the progress of our developmental activities. Apart from this, the informal character of inquiries will save the public servant from exposure to public gaze during the course of an enquiry, which often has the effect of condemning him in the public eye before he is ultimately found guilty or innocent, as the case may be. The institution will thus be a protection for, and a source of strength rather than a discouragement to, an honest official, whose susceptibilities alone are germane in this context."

In drawing up its scheme, the commission has taken whatever is suitable to Indian needs from the Scandinavian authority known as "OMBUDSMAN" and also from the provisions of the British legislation now before the House of Commons envisaging the appointment of a "Parliamentary Commissioner". Under the scheme recommended by the Commission there will be two independent agencies - a "Lok Pal" to look into complaints of administrative excesses and malafide exercise of discretion by Ministers and Secretaries of the Central and State Governments, and "Lokayukta", one for the Centre and one for each State, to investigate similar charges against other officials. To ensure that the Lok Pal is independent of the executive and to create public confidence in the impartiality and

fairmindedness of him, the Commission has proposed that the President would appoint him on the recommendation to be made by the Prime Minister in consultation with the Chief Justice of India and the leader of the opposition. He will be answerable to the President and Parliament and cannot be removed from office by the executive except under the impeachment procedure provided under Article 123(4) of the Constitution for Supreme Court Judges. He shall have the same status, salary and other emoluments as the Chief Justice of India. A draft bill providing for the appointment and functions of the Lokpal (to be suitably adapted for the appointment and functions of the office of Lokayukta) was appended to the interim report of the Commission. Subsequently a bill creating the office of Lokpal was moved in Parliament and is now under its consideration(Appendix VII).

The present system of Vigilance Commissions wherever operative would become redundant on the implementation of the Commission's scheme and will have to be abolished on the setting up of the institution of Ombudsman (Lokpal).

Preventive Measures:

Corruption cannot be eliminated or even significantly reduced unless preventive measures are planned and implemented in a sustained and effective manner. Preventive action must include administrative, legal, social, moral, economic and educative measures.

There is no doubt that given adequate salaries, housing and medical facilities, the integrity of civil services can be considerably enhanced or at least the causes of corruption can be minimised. In such a context, strict vigilance and close supervision would necessarily bring positive results. The following administrative measures are generally recommended for reducing the scope of corruption[163]

1. The greatest care should be taken in selecting officers entrusted with the grant of permits and licences, and the rules for granting them should be drawn up with the greatest precision so as to avoid wide discretionary powers. Government have to ensure that only those officers whose integrity is above board should be selected for high administrative posts and officers whose integrity is not certified, should not be granted extension of service or re-employment.

2. Administrative delays must be reduced to the utmost extent possible and firm action should be taken to eliminate all such causes of delays as provide scope for corrupt practices. Undue delays in the investigation of administrative lapses would not only endanger the evidence which may disappear or be tampered with, but could be regarded as grossly unfair to the person accused. The cardinal principle of departmental action is that it should be initiated and completed as promptly as possible.

3. Government servants and Ministers should be required to submit returns from time to time regarding movable and immoveable properties acquired by them.

4. Employees should be urged to observe the requirements of courtesy, consideration and promptness in dealing with or serving the public. Each department will be responsible to bring the proper minimum standards of conduct to the attention of all its employees.

5. Government shall impress on the public that it is their duty to report at once and co-operate with the authorities in cases of official misconduct. Public vigilance is the basis of

> any anti-corruption strategy. While the Government seek to tighten the law and set up new institutions for investigation, the real remedy for checking the evil lies much deeper in the society itself. It will be difficult to tackle this growing evil unless we mobilize the best elements in society to fight it. Public watchfulness is easily the most powerful deterrent against corruption.

In order to harness popular participation in the campaign for purity in national life and administration, a non-official agency known as the Samyukta Sadachar Samiti was formed in April 1964 with Shri Gulzarilal Nanda, the then Union Home Minister as president and Shri Dhimsen Sachar as the General Secretary. It's main objective is said to be the creation of a social and moral climate that would discourage anti-social and corrupt practices and develop the will and capacity of the people to fight and eradicate corruption in all forms. It should be remembered that for every corrupt official there are hundreds of members of the public wanting to make use of him and to feed him. The faults reflect our own moral failures. Therefore, what is needed is to bring about a healthy social climate and public opinion in which people of integrity are respected, obsession with material gain at all cost scotched, and corrupt elements looked down as criminals. Efforts have to be made to develop a consciousness of moral and social responsibility and an appreciation of the place of moral values in the life of an individual and the country. The moral and social sanctions generated by a responsible public opinion will far outweigh the corrective and deterrent influence of punitive action by the State.

.....

C H A P T E R S I X

WHITE COLLAR CRIME IN GOVERNMENT AND POLITICS

REFERENCES AND NOTES

1. Lasswell H.D., 'Bribery', Encyclopaedia of Social Sciences, Vol. 2 (Macmillan) 1959, p. 690.

2. Monterio, John B. Corruption: Control of Maladministration (Manaktalas), 1966, pp. 17-18.

3. Kautilya, 'Arthasasthra', (321-320 B.C) - See Varshni, Law of Bribery and Corruption (1963) pp. 6-7.

4. Jeejeebhoy, Bribery and Corruption in Bombay (1952); Alexander Hamilton, An Account of the East Indies (1774) Roberts P.E., History of British India, Oxford University Press, 3rd ed., pp.143-148 and 216-219.

5. See 'City Lights' by Civicus in Times of India (Delhi) dt. July 1, 1968.

6. Report of the Committee on Prevention of Corruption (Santhanam Committee), Ministry of Home Affairs, Govt. of India (1964) p. 7 and 24.

7. Ibid. p.6.

8. Hari Singh Gaur, Penal Law of India, 7th ed. (1963) Vol.I, p. 760.

9. Santhanam Committee Report, supra, p. 6-7.

10. In view of the fact that 'corruption' is not merely a legal problem but more of a sociological one, it is examined in this chapter in its wider significance particularly with reference to causes and remedies.

11. Chapter IX-A of the Indian Penal Code, sections 171-A to 171-I deal with offences relating to elections of which the important are:(a) Bribery (171E);(b) Undue influence at elections or personation at elections (171F); (c) False statement in connection with an election (171G); (d) Illegal payments in connection with an election (171H); and (e) Failure to keep election accounts (171I).

12. Ibid.

13. Ibid., Section 171 B

14. Chandi K.T., 'Prescribe Standards', SEMINAR, April 1966 at p. 38.

15. See generally, Roberts P.E., History of British India, Supra.

16. Santhanam Committee Report, pp. 6-9.

17. Ibid. p.8 and pp.101-106; See also Dwivedy and Bhargava, Political Corruption in India (1967) pp.90-91.

18. It is said that former Prime Minister of India, Jawahar Lal Nehru, held such a view in the beginning - see generally Paul A. Appleby, Public Administration in India - Report of a Survey, Govt. of India (1957)pp.1-9.

19. John Monterio, Corruption etc., Supra, p. 34.

20. Rajagopalachari, C., Swarajya, January 1964, p. 1.

21. More and more regulations on economic activity are not only necessary but desirable in a planned socialistic society like India; but the point that is suggested here is the possible resultant confusion and complexity which could be minimized only by an efficient administration.

22. See generally Deb, R., Principles of Criminology, Criminal Law and Investigation Vol.I (1968) p. 307.

23. Paul Douglas, Ethics of Government, N.Y.

24. Santhanam Committee Report, supra, p. 200.

25. According to one such official who occupies principal executive positions in two big commercial concerns, it is difficult, if not impossible, to secure licences through honourable methods without active liaison assistance in Delhi - See 'Post-Retirement Jobs for Civil Servants', Civic Affairs, November 1962; See also Santhanam Committee Report, pp. 200-204.

26. Santhanam Report, p. 202.

27. Statesman, (Delhi) dt. August 9, 1966.

28. Venkatachar C.S., Economy and Efficiency in Public Administration in India, Forum of Free Enterprise (Bombay); Also see Kodanda Rao, B. SEMINAR - VIII, April 1960.

29. Santhanam Committee Report, p. 46.

30. Ibid. pp. 11-12.

31. Report of the Railway Corruption Enquiry Committee (Kripalani Committee), 1953-1955, Govt. of India, pp.22-23 and 123-124.

32. Santhanam Committee Report, pp.9-10 and 45-46.

33. Ibid. p.10.

34. Quoted by K.M.Munshi, Kulpati's Letter, BHAVAN'S JOURNAL, Vol.VII, No.25, pp. 6-11.

35. Kripalani Committee Report, Supra, p.22.

36. Appleby Report, supra, p. 53.

37. Kripalani Committee Report, supra, p.10.

38. Santhanam Committee Report, p. 34 and 147-148.

39. "311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State -

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry:

Provided that this clause shall not apply -

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry." - Article 311, Constitution of India.

40. Santhanam Committee Report, supra, pp.34-35.

41. See generally, Seervai H.M., Constitutional Law of India (1967) Tripathy (Bombay) pp. 1035-1088.

42. Dhingra Vs. Union of India, 1958 S.C.R. 828.

43. Seervai, Constitutional Law of India, p. 1061.

44. Joseph John Vs. Travancore Cochin, cited in Santhanam Committee Report (1964) p. 30.

45. Santhanam Committee Report, p.30. A number of restrictive conditions imposed by Courts in the enunciation of rules of natural justice included in the words "reasonable opportunity in Article 311(2) are listed in the Report at pp.30 - 32.

46. Santhanam Committee Report, pp. 10 - 11.

47. See generally the discussion on the relevant provisions of the Criminal Procedure Code in Santhanam Committee Report, pp. 61-64. The Criminal Law Amendment Acts of 1952 and 1958 were intended to provide for a more speedy trial of cases of bribery and corruption. In the case of Ministers corruption charges are enquired into only when the Cabinet agrees such a course and more often decisions in this respect are taken at a political level - The Lok Pal Bill submitted by the Administrative Reforms Commission, however, provides necessary machinery to enquire corruption charges against Ministers as well(See Appendix V).

48. Santhanam Committee Report, p. 46.

49. "Economic Crimes in the Soviet Union" (December 1964), Vol.V, Journal of the International Commission of Jurists, p.3; Also see 29th Report of the Law Commission of India, pp. 14-17.

50. See generally Kripalani Committee Recommendations for exemplary punishment for corruption, supra, p.10.

51. Quoted in Kripalani Committee Report, p. 7.

52. Ibid. p.117.

53. Ibid. pp.117-118.

54. The Public Accounts Committee of Parliament in its 21st Report expressed surprise that in 1961-62 while there were 4511 cases in which penalties were levied for concealment of income totalling Rs.7.13 crores, not more than one person was sent up for prosecution. Though this instance does not directly relate to corruption in the services, still it indicates the practice of taking only a very small percentage of violations to Courts of law and dealing most of them administratively. It is not clear as to why this is so. However, the difficulty of advancing sufficient proof for a conviction in a criminal court is sometimes advanced as the main reason for keeping the violations out of court.

55. Amongst them the Santhanam Committee Report mentioned a few malpractices and recommended their prohibition under criminal law, sections 7 and 8.

56. It is at least debatable whether the conditions against which these procedural safeguards were devised in the

early common law are any more valid in the present context.

57. Report of the Committee on Prevention of Corruption (Santhanam Committee), pp. 14 - 23.

58. The Delhi Special Police Establishment was created in the early stages of the last War in the year 1941 by means of an executive order of the Government of India to combat the incidence of corruption arising from the vast expenditure on purposes connected with the prosecution of the War. It later received statutory recognition in the form of the Delhi Special Police Establishment Act (25 of 1946). It was then placed under the Ministry of Home Affairs and its functions were enlarged to cover all Departments of the Government of India. Its jurisdiction extends to all the Union territories and to all others States with their consent.

On the establishment of the Central Bureau of Investigation in April 1963, the Delhi Special Police Establishment has been made one of its principal division and redesignated as the Investigation and Anti-corruption Division of the C.B.I. The jurisdiction powers and functions of this Division however remain as before under the Act of 1946. It is authorised to take up for investigation only those offences which are notified by the Central Government under section 3 of the Delhi Special Police Establishment Act, 1946. (Appendix V). These include cases of bribery, illegal gratification and criminal misconduct punishable under sections 161 - 169 of the Indian Penal Code or under the Prevention of Corruption Act, 1947. In the area of notified offences the Special Police Establishment enjoys concurrent powers of investigation and prosecution with State Police Forces. To avoid duplication of work administrative arrangements are made between the Centre and the States with regard to the type of cases to be handled by the respective agencies.
For further details see R.Deb, Principles of Criminology, Criminal Law and Investigation, 2nd edn., Vol.I (1968) pp. 311 - 313.

59. The Administrative Vigilance Division started functioning in August, 1955 with the purpose of initiating and sustaining a simultaneous effort in all Ministries and Departments of the Government of India for combating corruption through preventive and punitive measures. Under this scheme there are Chief Vigilance Officers in each Ministry or Department and Vigilance Officers in all subordinate and attached offices, as well as public sector undertakings. Each Vigilance Officer under the guidance of the Director of the Administrative

Vigilance Division and the Secretary of the Ministry/ Department is primarily responsible for the purity, integrity and efficiency of his Department. The Vigilance Officers besides being the link between the Central Vigilance Commission and the Ministry/Department should also act as special assistant to the Secretary or the Head of the Department in prevention, detection and punishment of corruption and other malpractices in the respective Ministry/Department.

The main duty of the Administrative Vigilance Division is to "Co-ordinate the work of the Vigilance Officers and to furnish the required drive and direction" in the eradication of corruption from Public Services - For further details see Santhanam Committee Report (1964) pp. 294 - 295.

The vigilance activities at the Centre have recently been reformed in view of the recommendations of the Santhanam Committee on Prevention of Corruption. Accordingly a Central Vigilance Commission was set up with a retired Chief Justice of a High Court as the first Vigilance Commissioner in February, 1964. Besides, a Department of Administrative Reforms was also constituted. A note on these changes in the vigilance organization at the Centre based on the Santhanam Committee Report (pp.224-228) is given in Appendix VI.

60. Santhanam Committee Report, p. 18.

61. Santhanam Committee Report, pp. 18-19.

62. Ibid. p. 19.

63. Civic Affairs (Kanpur), November, 1962.

64. See generally Santhanam Committee Report, pp. 18-19.

65. The Railway Corruption Enquiry Committee was appointed by the Government of India in September 1953 with Shri H.N.Kunzru and later Shri Acharya J.B. Kripalani as its Chairman. The terms of reference of the Committee was:

"To enquire into and report on:-

(i) Extent of corruption prevalent among various categories of Railway employees in their dealings with the public.

(ii) Methods adopted by the staff concerned.

(iii) The causes of corruption.

(iv) Responsibility of the using public.

(v) Defects, if any, in rules and regulations which leave loopholes for corruption.

(vi) Remedial measures, both administrative and legal, to eradicate this evil in all its aspects".

Report of the Committee submitted in July 1955, Ministry of Railways, Government of India, pp.2-3.

66. Ibid., pp. 13-14.

67. Ibid., pp. 20-21.

68. Ibid., pp. 44-53.

69. See Chapter VIII infra: Public attitude towards white collar crimes - Findings of a public opinion survey.

70. See generally, Major P.G. Barsay Vs. State of Bombay, 1961 (2) Cr.L.J. 828 (S.C.); Major H.H.B.Gill Vs. The King, 49 Cr.L.J.503 (P.C.).

71. Santhanam Committee Report, p. 16.

72. Report of the Committee on Distribution of Income and Levels of Living (Mahalanobis Committee) Part I, Planning Commission, Govt. of India (1964) p. 18.

73. Santhanam Committee Report p. 260.

74. Ibid. pp. 250-251.

75. See for further details on corrupt practices in Import & Export Control Organization - Santhanam Report, pp. 251 - 254.

76. Ibid., p. 254.

77. See for details Santhanam Committee Report, pp.274-281.

78. Ibid. p. 267.

79. Ibid. p. 271.

80. The Department has since started the publications of the names of big assessees and their income-tax payments (see Section 33 of the Finance Act, 1964).

81. See Indian Express (Delhi) dt. March 3, 1964.

82. LINK (Delhi) News Magazine dt. February 10, 1963.

83. D.O.Letter dt. February 4, 1964 from the President of the F.I.C.C.I. to the Union Home Minister.

84. See Times of India (Delhi) dt. March 6, 1964.

85. The Hindu Weekly (Madras) February 1964.

86. Civic Affairs (Kanpur) January 1963.

87. Mulla J. in State Vs. Mohd. Naim - See Civic Affairs (Kanpur) November 1961, p. 25.

88. [illegible] (Bombay) dt. October 6, 1962.

89. Civic Affairs (Kanpur) November, 1962.

90. Monterio, Corruption (Manaktalas, Bombay), supra, p.48.

91. Ibid.

92. Report of the Bihar Police Commission, Chapter XXIV.

93. Ibid.

94. Report on the Problem of Corruption in Delhi Police by Shri M.P.Singh, D.I.G. Delhi (1962); Also see Report of the Punjab Police Commission, 1962.

95. Crime in Delhi - XX, Statesman (Delhi) dt.Oct. 10, 1962.

96. Abul Hasanat, I.P., "Justice and Peace For All"(1954), Pakistan Co-operative Book Society.

97. Ibid.

98. Civic Affairs (Kanpur) December 1962, p. 51.

99. Ibid, November 1962, p. 51.

100. e.g. Harendra Chandra Barori Vs. Emperor, 48 Cr.L.J. 118 (Cal); State vs. Pundlik, 1959 Cr.L.J.1421(Bom); Keshavlal Vs. State of Bombay, 1961 (2) Cr.L.J.571(S.C.)

101. This wholesome principle is adopted as a directive principle of State policy in Article 50 of the Constitution of India.

102. Fourteenth Report of the Law Commission of India on Reform of Judicial Administration, Vol.I, pp.69-70.

103. Santhanam Committee Report, p. 109.

104. Elliot and Merril, Social Disorganization, Harper, pp. 534 - 535.

105. Ibid., p. 520.

106. Dwivedi and Bhargava, Political Corruption in India, New Delhi (1967).

107. Press Statement at Indore by Shri Sanjivayya on July 31, 1963 - Quoted in Public Administration (Kanpur), 1963, p. 11.

108. Santhanam Committee Report, pp. 101-102.

109. Memorandum submitted to the President of India on Shri T.T.Krishnamachari, Finance Minister, Govt. of India by Swatantra, JanSangh, S.S.P., D.M.K., Hindu Mahasabha and some independent members of Parliament - November 22, 1965, pp. 1-2.

110. In December 1963, a member of the U.P. legislature brought forward serious allegations in the State Vidhan Sabha regarding an alleged gang of smuggling racket in which a State Cabinet Minister was reported to have been involved - Hindustan Times (Delhi), dt. December 21, 1963.

111. In re Iron and Steel Co. Ltd., A.I.R. 1957 Calcutta 234 at p. 237.

112. Santhanam Committee Report, p. 104-105.

113. M.V.Namjoshi, Monopolies in India, Lalvani (Bombay), 1966, pp. 84.

114. It is gratifying to note that in spite of opposition from certain influential party colleagues, Mr.Fakhruddin Ali Ahmed, Minister for Industrial Development, has brought forward a bill prohibiting company donations to political parties. The bill is to be taken up for consideration by the Lok Sabha in August 1968 - See Times of India (Delhi) dt. July 4, 1968; See also Appendix IV.

115. Ruthnaswamy M., SWARAJYA (Madras) dt. June 15, 1963.

116. Dwivedi and Bhargava, Political Corruption in India (1967), Delhi.

117. Report of the Commission of Inquiry (Constituted under Home Ministry's Notification No.S.O.3109 dt.November 1, 1963), New Delhi, 1964. (Das Commission).

118. Rao Shiv Bahadur Singh and another Vs.State of V.P. A.I.R., 1954(S.C) 322.

119. Report of the Das Commission, supra, pp.1-2.

120. Ibid., p. 277

121. Ibid., pp.241-249.

122. Ibid., p. 122.

123. Ibid., p. 122.

124. Ibid., p. 93.

125. Ibid., pp.283 - 284.

126. For a detailed account of the alleged "shady" transactions the following documents may be consulted: (i) The Orissa Affair and C.B.I. Inquiry by S.N.Dwivedi, New Delhi (1965); (ii) Dwivedi and Bhargava, Political Corruption in India (1967), Chapter IX.

127. A "certified" copy of the unpublished C.B.I.Report on the "Orissa Affair" was placed on the table of the Lok Sabha by Shri S.N.Dwivedi,M.P.; It created a lot of sensation in and outside Parliament, particularly because its genuineness was never contradicted by the Government.

128. Lok Sabha Proceedings, February 22 and March 3,1965.

129. Dwivedi & Bhargava, Political Corruption in India, "Mundhra Affair".

130. Memorandum submitted to President on November 22, 1965, supra.

131. Ananda Bazar Patrika, dt. February 6, 1963; CURRENT (Bombay) dt. March 9, 1963; Also see Dwivedi & Bhargava, Political Corruption, Chapter XI.

132. Lok Sevak (Calcutta) dt. March 12, 1963.

133. Dwivedi & Bhargava, Political Corruption, pp. 160-161.

134. The report of the Ayyangar Commission was since submitted to the Jammu & Kashmir Government which is reported to be contemplating legal action against the former Prime Minister (Bakshi Ghulam Mohamed) and some Government Officials on the basis of the Commission's findings.

135. The Sarkar Commission also has submitted its report in 1968. According to the evidence before the Commission, it could not find any impropriety on the part of the Minister in revoking his earlier decision in favour of a Private Party in the alleged Steel transactions - Final Report of the Steel Transactions Inquiry Committee, Govt. of India (1968) p. 144.

136. Dwivedi & Bhargava, Political Corruption in India, supra, pp. 63-69.

137. Ibid. p. 65.

138. Ronald Wraith & Edgar Simpkins, Corruption in Developing Countries, George, Allen & Unwin, London (1963)

139. Dwivedi & Bhargava, Political Corruption, supra, p. 19.

140. Santhanam Committee Report, pp. 102-105.

141. Speech of Mr.Porter, Home Secretary, Council of State Debates, dt. February 25, 1947, Vol.I, No.5, page 180.

142. Ibid. Quoted from 29th Report of the Law Commission of India, 1966, p. 182.

143. Section 5(1) read with section 5(3) of the Prevention of Corruption Act, 1947. The rule of evidence under section 5(3) was later substituted by section 6 of the Anti-corruption Laws (amendment) Act, 1964 (Act 40 of 1964) which created a substantive offence of the same nature - vide section 5(1)(e) which now reads:

"5(1) A public servant is said to commit the offence of criminal misconduct -

(e) if he or any person on his behalf is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income."

144. C.S.D. Swamy Vs. The State, 1960 Cr.L.J. 131 (S.C.); M.N.Gandhi Vs.State, 1960 Cr.L.J.934 (Mys); Sajjan Singh Vs. State, 1964 (1) Cr.L.J. 310(S.C.)

145. See R.Deb, Criminology, Criminal Law and Investigation (1967) pp. 387 - 388.

146. Imden Vs.State of U.P., A.I.R. 1960(S.C.) 548; Also see Ramchandra Prasad Vs. State of Bihar, 1961 (2) Cr.L.J. 811 (S.C.)

147. See also speech of Mr.Porter, Council of State Debates, February 25, 1947, Vol.I, No.5, page 180.

148. Abul Hasanat, "Justice and Peace for All" (1954); Also Shri V.R.Krishna Iyer (now Judge of the Kerala High Court), "Diagnosis and Treatment of Corruption", SEMINAR (Delhi), dt. April, 1960.

149. Railway Stores (Unlawful Possession)Act, 1955 - Section 3; Bombay Prohibition Act - section 66 and 85.

150. Pershadi Vs. State of U.P., A.I.R. 1957 (S.C.) 211; Poonamdan Vs. State of Bihar, 1955 Cr.L.J.1647; Sarjoo Prasad Vs. State of U.P., 1961(1)S.C.J. 484.

151. The High-Powered Administrative Reforms Commission that is now examining the issue in all its aspects is expected to give clear and concrete proposals in this regard.

152. Santhanam Committee Report, pp. 53- 66.

153. Ibid. p. 75 and 77.

154. Ibid. pp. 205-228.

155. First Report of the Central Vigilance Commission placed on the table of the Lok Sabha, 1966.

156. Santhanam Report, p. 206.

157. C.D. Deshmukh, Srinivas Sastri Endowment Lecture, Madras (1957).
A.D.Gorwala, Report on Public Administration (1951); P.B. Gajendragadkar, Address at the Indian Institute of Public Administration (1963); Administrative Reforms Committee (Mathur Committee) Report, Rajasthan, 1963; Santhanam Committee Report 1964; N.R.Madhava Menon, The Case for an Ombudsmen in India, The Law College Magazine, Ernakulam (1963-'64) Vol.XXXI,p.33.

158. Monterio, J. Corruption, Supra, pp.272-273.

159. Journal of the National Academy of Administration, Vol.VIII, No.4, October 1963 at p. 43.

160. Interim Report on the setting up of an Ombudsman-like institution submitted by the Administrative Reforms Commission, 1966.

161. Ibid.

162. A bill for setting up the office of 'Lok Pal' is now under the consideration of Parliament.

163. See generally Santhanam Report, pp. 41 - 52.

....

CHAPTER SEVEN

WHITE COLLAR CRIME IN THE [redacted] PROFESSIONS - MEDICINE, LAW, EDUCATION, ACCOUNTING ETC.

This chapter is primarily intended to indicate in broad terms the criminal tendencies and grossly unethical conduct that are increasingly discernible in the learned professions which were till recently considered to be beyond the pale of criminal influences. Of course, many of the malpractices discussed hereinafter are not universally accepted to be 'criminal' in the traditional sense of the term. They are described as unethical or objectionable practices and are deemed to be condemnable as professional misconduct. Rules against them are enforced by voluntary professional organizations, like the Indian Medical Council, Indian Bar Council, the Council of the Institute of Chartered Accountants of India and their regional bodies in States. The punishments that are ordinarily awarded for violations include warnings and removal of name of the offender from the common Register. Criminal prosecutions in ordinary courts of law are very seldom resorted to and, as such, police records or crime statistics do not give sufficient data on the nature and extent of violations by members of the professions. However, the few official reports and individual studies available on the subject, reveal a very distressing picture of the working of these professions. While a large section of people practising these professions are still honest, devoted, and conscious

of their social responsibilities, there are an increasing number of others who indulge in illegal practices and adopt business techniques in professional conduct and thereby succumb to influences of competition, of unlawful profit and eventually of crime.

The Medical Profession:

The white collar group in the medical profession includes the physicians, surgeons, nurses, compounders and dispensing chemists. The insidious philosophy of acquisitive urge that characterizes modern urbanized societies has eroded the medical profession of its basis in service and nobility. Commenting on the state of affairs in the medical services in India, a former health minister of Bihar observed:[1]

> ".....It is a sad irony that a sacred profession which aims at the service of the suffering humanity has been converted into a pure business in which the doctors are trading in the misfortune of people and squeezing out whatever money the poor patients can manage to spend even by selling off all their property ..... Everyday we come across reports, published in the newspapers or circulated by the victims themselves, which tell of the cruel deeds of the doctors and how they attach more value to money than their duty of mitigating the sufferings of people, and how they try to rob the patients of the last penny in their pocket."

Indeed, the unethical and illegal practices of some of the highly qualified medical men are turning the medical profession itself into a commercial activity pursued for the purpose of making money. How else can one explain the inequality of medical care and the business-like

bureaucratic attitude often times resulting in gross negligence on the part of doctors in Government hospitals? Taking advantage of people's suffering and distress, these unscrupulous men of medicine have turned the hospital system into a veritable centre for making money. Facilities provided in Government hospitals are utilized by doctors working in them to secure patients and to push up their own private practice. They discriminate between poor and rich patients and neglect those who do not properly grease their palms. Sometimes hospital beds are allotted out of turn by doctors in charge overlooking the claims of deserving patients and accepting material inducements from others. Instances of doctors giving false, misleading and improper medical certificates and manipulating admission and discharge registers of hospitals to provide alibis have been detected on a number of occasions. In some cases doctors in collusion with the police or with criminals themselves have deliberately manipulated post-mortem reports and have given fraudulent testimony in accident cases to help unlawfully one side or the other. Illegal sale of alcohol, contravention of the provisions of the Drugs Act and the rules made thereunder, sale of schedule poison to the public under cover of his own qualification, underhand dealings with manufacturers or distributors of patent medicines, maladministration of hospital services etc., are some of the not-so-uncommon malpractices indulged in by members of the medical profession. Penalties imposed departmentally and by the Medical Councils have not been deterrent enough to keep the unscrupulous members of the profession law-abiding.

Medical practitioners, like other men of the educated and noble professions, are prohibited from soliciting customers through commercial publicity and indiscriminate advertisements. According to the Code of Medical Ethics adopted by the Medical Council of India, the Indian Medical Association and most of the State Medical Councils[2] soliciting private practice either by splitting fees or paying commission to those who bring patients to him or by advertising in newspapers or by agreeing to attend any patient on the terms of "no cure - no pay" is an objectionable and grossly unethical practice for which either the Medical Council of India and/or State Medical Council are empowered to take disciplinary action under the Medical Council Act, 1956. But this wholesome principle is seldom adhered to and many doctors including the top few indulge in cheap publicity proclaiming themselves as specialists and experts. Competition for profit and monopolistic tendencies have started raising their ugly heads in the field of medicine because of the misconduct of a few of its members. In this situation the persons who profit most are the quacks and charlatans who trade on the ignorance and disease of the illiterate masses in India. In big cities and towns they put up hoardings, posters and newspaper advertisements and engage touts and 'walking chemists' to attract patients. They promise all kinds of specialized and expert treatments to chronic diseases and offer to return the fees in case of unsatisfactory result. Through seemingly innocent publicity they exhort the qualities of their medicine and

encourage people to purchase them. The comparative advantage in the prices of these so-called 'wonder drugs' pursuade even the informed section of the public to buy them. This leads to self-medication and consequent evils to public health and security. The provisions of the law of fraud and cheating and those of the Magic Remedies (Objectionable Advertisements) Act are insufficient against this growing malady.

The unorganized and relatively cheaper systems of medicine like Ayurveda, Unani and Homeopathy have given protective cloak to the nefarious activities of many a 'doctor-businessman'. Large number of white collar crimes in the area of medicine are committed by practitioners of these systems. So-called hospitals, clinics, nursing homes and laboratories have been set up by these doctor-businessmen with spurious claims and under insanitary and unhygienic conditions. They freely advertise as specialists in secret ailments like sexual debility, impotency and venereal diseases. Such practitioners use allopathic medicines, injections and surgical operations without having any training or proper knowledge of their use and potentiality. With the medical services remaining too inadequate to meet the growing needs of impoverished millions in India, the danger from quacks, charlatans and unqualified practitioners is not merely potential but real and extensive. Besides jeopardising public health and safety, such a situation tends to undermine the progress of scientific medicine.

It is common knowledge that a large number of illegal abortions are done every year by men in the medical profession. Regardless of what one may think of the practice of abortion or its desirability in contemporary Indian society, the commission of such an operation by a medical practitioner is criminal unless performed to save the life or health of the mother.[3] The loss of lives and damage to health resulting out of illegal abortions performed under medically unsafe and psychologically unsound conditions are said to be considerably large.[4]

Practices which are fraudulent, dishonest and deceitful but yet not condemned as criminal are numerous in the medical profession. Thus, there are doctors who administer prolonged and unnecessary treatment even for minor ailments, prescribe costly medicines of unproven quality without properly diagnosing the disease, conduct avoidable operations, charge prohibitive fees and harass the patients and their relatives with a view to extract more and more money. There are others who accept money and services from manufacturers of patent medicines, cosmetics and toilet goods and recommend their products to the unsuspecting public. According to the code of Medical Ethics, a medical practitioner is prohibited from associating himself with commerce in such a way as to let it influence his attitude towards the treatment of his patient.[5] It is unethical for a practitioner to allow his name to be associated in any way with the manufacture or sale of a proprietary food or medicine or lend himself to the puffing

of such articles. Disregarding these salutary principles many medical practitioners have associated themselves with medical agents of manufacturers recommending their products, endorsing their 'bogus' claims and deriving pecuniary profit for themselves.

It is apparent that the enforcement of discipline and code of professional conduct on its members by the All India Medical Council is far from satisfactory. The only sanction that the Council can impose on a registered practitioner for professional misconduct is removal of the name of the offender from the Register for a specified period. It is obvious that the law regulating medical profession needs to be strengthened providing deterrent sanctions for serious violations involving professional misconduct. The institutional organization responsible for enforcement of the law also should be made effective.

Besides the doctors, other members of the medical profession prone to criminal practices are the chemists, druggists and representatives of pharmaceutical establishments. Sale without prescription, supply of narcotics and alcoholic medicines, sale of substitute products of dubious quality at enhanced rates, sale of time-expired drugs etc., are common malpractices of druggists and dispensing chemists in India. Many of them operate without proper licences and adequate storage and dispensing facilities. The extent of violations of statutory obligations by these men of medicine and the damage resulting from it to public health and safety deserve careful study.

The Legal Profession:

The public image of the learned and noble profession of law has considerably lowered in India in recent times mainly because of the illegal practices and unprofessional conduct of many of its members. Of course, there have been cases in the past where lawyers were punished for professional misconduct or even for serious crimes committed in the course of their profession. But they were relatively few in number and on the whole the profession was conscious of its social responsibilities. Today with the sudden increase in the number of lawyers and with the concentration of work in comparatively few hands an unhealthy competition had developed in the profession bringing with it a series of evils in respect of canvassing litigation and achieving success. The legal processes and courts of law came to be abused by unscrupulous members of the profession with a view to extract more from poor and ignorant litigants. Some lawyers accept briefs regarding fake claims knowing it to be bogus and abuse the legal processes through fictitious litigation. Lawyers entering into champertuous agreements with clients to share proceeds of litigation is also not an uncommon phenomenon. There are lawyers who fabricate evidence, steal or bribe out copies of case diaries, cause documents to disappear, bribe jurors and corrupt court officials in order to achieve their illegal purposes.[6] Sacrificing all scruples for money these lawyers prostitute their skill and learning to shield criminals and in the process do all sorts of illegalities and malpractices. It is

not therefore surprising if the layman condemns the legal profession as full of chicanery, deception and fraud. Indeed one writer found the cause for the growing lawlessness in society to the criminal practices and unethical conduct of members of the legal profession itself.[7]

It is likely that most cases of misconduct are practised by the relatively unsuccessful members of the profession. It is also likely that the circumstances in the profession are such as to tempt the less-privileged to adopt short-cuts for achieving community standards expected of persons in the profession. The centralization of the legal talent in firms and the concentration of successful practice in 'favoured few' led to a situation in which individual practitioners and particularly the junior lawyers are kept on the fringes and generally as salaried assistants to those who are at the top. Furthermore, since the turn of the century, the lawyer's profession has been invaded by all kinds of people including trade union leaders, chartered accountants, tax specialists, arbitrators and the like bringing down professional standards and encouraging unhealthy business-like competition. Contrary to accepted standards of professional conduct[8] many practitioners have started soliciting work either personally or through touts and advertised themselves as experts and specialists in different areas of litigation. They accepted payment less than the fee payable under the rules. The mad rush for money and lucre have even led some practitioners to violate their sacred

obligations to their clients. Complaints of divulging professional communications and bargaining with the opposite party in contravention of Section 126 of the Indian Evidence Act[9] are sometimes heard against legal practitioners.

The need for a code of legal ethics and an effective organization for the proper enforcement of the code has recently been recognized under the Advocates Act, 1961. It can be expected that the All India Bar Council and the State Bar Councils constituted under the Act would adopt suitable measures to remedy the deteriorating conditions in the legal profession and curb the criminal tendencies of its members.

The Profession of Accountancy:

Under the present system of corporate investment there is separation of management and ownership of industrial property. Auditors who form the only link of trust between these two elements in the commercial process, have to play an increasingly important and responsible role in protecting the rights of share-holders. The shareholders of a company have mainly to depend upon the good faith and efficiency of the auditors appointed to check the accounts and certify the balance sheets of the company. The auditors are, therefore, under a duty to safeguard the interests of the shareholders vis-a-vis the activities of the directors in the purported exercise of their powers in dealing with the assets of the company.[10] But in the present set-up, contrary to expectations, there are disturbing

reports of corrupt and illegal practices on the part of a section of this influential profession causing incalculable loss to the public and to the exchequer. Complicity with the directors or persons in control of the company's affairs in illegal or irregular financial transactions, superfluous and slip-shod verification of accounts without any scrutiny of the legality or authenticity of the transactions involved and such other malpractices have reduced the utility of the audit system and undermined the confidence of the public in the profession. Cases of failure of auditors to discharge their statutory duties properly have been detected year after year by the Company Law Administration Department of the Government of India.[11] In a number of cases involving serious professional lapses the Administration has issued warnings to the auditors and referred their cases for necessary action to the Institute of Chartered Accountants of India.

The enforcement of discipline in the profession of chartered accountants is exercised under the Chartered Accountants Act, 1949 by the Institute of Chartered Accountants. The Act together with the Schedules thereto contain the various forms of behaviour deemed as professional misconduct and authorize the Council of the Institute to conduct inquiry in such cases. On finding a member guilty of professional misconduct the Council may either reprimand the member or remove his name from the Register for a period not exceeding five years. Cases of grave misconduct, where

punishments exceeding the above are warranted, are referred to the High Court together with the Councils' recommendations for final adjudication. In spite of the existence of an elaborate code of conduct and an organized institutional set-up to enforce them[12] there have been too many cases of malpractices and professional misconduct on the part of auditors and accountants. There have been cases where the auditors were dishonest, fraudulent and grossly negligent in the conduct of their professional duties. The Commission of Inquiry on the Working of the Dalmia-Jain Group of companies has disclosed grave professional misconduct and dereliction of duty on the part of some of the accountants, auditors and liquidators.[13] The company Law Administration detects every year cases where material facts in the knowledge of the auditors are dishonestly not disclosed in the financial statements prepared by them.[14] This has often resulted in misleading financial statements and consequent loss to the shareholders.

Clauses 5,6,7 and 8 of the Second Schedule to the Chartered Accountants Act, D49 explain the duty of a Chartered Accountant to express his opinion on the truth and fairness of statements of accounts after examining their authenticity with reference to information and explanations given to him.[15] While on the one hand, an accountant is prohibited from expressing an opinion before obtaining the required data, on the other hand, he is expected to make honestly and reasonably his findings on the data, his comments on the inadequacy

of the data and his true and fair view on the authenticity and legality of transactions examined by him. In spite of these wholesome provisions of professional behaviour and statutory obligations under the Chartered Accountants Act,[16] 1949, the Income-tax Act,[17] the Indian Penal Code,[18] 1860 etc., there are increasing number of reported cases where auditors have consciously or unconsciously disregarded them. This has tended to minimise the utility of audit and to bring the profession into disrepute. It further led to a demand for nationalization of the audit services in India.[19]

The Educational Profession:

Educational institutions and the teaching profession endowed with the responsibility of cultivating a healthy society by producing honest citizens have hitherto been largely free from criminal practices. The need for a written code of conduct was never felt in this profession till recently. This may partly be due to the limited scope provided in this area for malpractices and partly because of the influence of education itself among its members. But, today, even the teaching profession is not free from white collar criminality. Apart from the all-pervading corruption in educational administration, the educationists, teachers and academicians have also become susceptible to easy virtues and have tended to compromise the integrity and honour of the profession for mere lucre and power.[20] Reports of intellectual dishonesty, plagiarism, favouritism and grossly negligent conduct in

the academic sphere have appeared in recent times.[21] There have been reports of professors in some Universities exploiting the research work of students working under them for their own ends and purposes. Wrangling for examinerships and academic promotions have tended to promote a series of malpractices in the academic profession. Instead of the really deserving persons the mediocrity in many cases manoeuvred to capture the key positions in the educational organizations and set its own image of success.[22] In all this the educational standards of our higher institutions of learning have suffered serious set backs. One may question the criminal character of many of these malpractices; but none can deny their grossly unethical character and serious anti-social effects.

According to newspaper reports,[23] the institution of private coaching has in recent times become a medium of fraud and exploitation. The growth of innumerable "teaching shops" with inadequate facilities in commercial centres in India has done more harm than good to the cause of education. Recently few principals and professors of half a dozen such institutions were arrested in Delhi for offences like fraud, cheating and forgery.[24] It is alleged that these people have persuaded the students to join their institutions and extorted money from them on the promise that they would secure eligibility certificates for them to appear in examinations conducted by some institutions outside Delhi. Besides, colleges

run for profit on business lines realizing huge capitation fees from non-deserving students and compulsory contribution to the management from teachers appointed to those colleges have become a common pattern of higher education in some of the South Indian States. This has in turn led to a lot of corruption, fraud and other malpractices.

It is also held by responsible quarters that the current student unrest in India is partly the result of unhealthy machinations and manoeuverings in academic circles. Teachers having vested interests and political ambitions do not even hesitate to make use of their students for their own ulterior ends. The ranks of teacher-politicians are swelling every day causing irreparable damage to academic integrity and educational standards. The absence of legal or voluntary control of professional conduct amongst teachers has only helped to perpetuate the malady and protect the corrupt in their ranks.

Concluding Observations:

The businessman, it was believed, egotistically pursues his self-interest, whereas the professional man altruistically serves the interests of others. But such distinctions are fast disappearing and most of the so-called professional men are adopting the techniques of business in their professional activities. They advertise themselves in a most unbecoming manner, compete with one another for clients, extort money irrespective of any ethical

considerations and prostitute their skill and learning for mere lucre. In the professional status, prestige and privileges, the unscrupulous among them find easy ways of making money through questionable and often times criminal means.

••••••

CHAPTER SEVEN

WHITE COLLAR CRIME IN THE PROFESSIONS OF MEDICINE LAW, ACCOUNTANCY, EDUCATION ETC.

REFERENCES AND NOTES

1. Ansari, A.Q., Health Minister of Bihar in the 'Searchlight', Republic Day Supplement, January 26,1964.

2. Code of Medical Ethics (New Draft Code), Medical Council of India, New Delhi, clauses 9 - 10; 'Our Ethics', Indian Medical Association Pamphlet No.VI, items III, IV, and V; Information booklet published by the West Bengal Medical Council for the guidance of all practitioners registered under the Bengal Medical Act, 1914, Part III.

3. Section 312, Indian Penal Code reads as follows:

> "Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the women, be punished with imprisonment of either description, for a term which may extend to three years or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine."

4. According to the Code of Medical Ethics performing or enabling an unqualified person to perform an abortion or any illegal operation for which there is no medical, surgical or psychological indication amounts to professional misconduct - items 5 and 6 of the Code of Medical Ethics published by the Maharashtra State Medical Council.

5. I.M.A. Pamphlet No.VI, item IV, pp. 9-10.

6. K.N.Katju, Legal Profession and Perjury in Law Courts, A.I.R. 1964 Journal Section, p. 75.

7. Barnes, H.E., The Repression of Crime (1956), N.Y.

8. The Bar Council of India Rules, Part VI - Rules Governing Advocates, Chapter II - Standards of Professional Conduct and Etiquette.

9. Section 126, The Indian Evidence Act reads as follows:

"No barrister, attorney, pleader or vakil, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment; Provided that ....."

"Explanation - The obligation stated in this section continues after the employment has ceased."

10. See generally M.C.Bhandari, Rethinking on the Functions of Auditors, I.Com.L.J.(1964) p.81; Bhandari, Social Responsibilities of Chartered Accountants, 1965 II, Com.L.J.p. 81.

11. Sixth and Seventh Annual Reports on the working of the Indian Companies Act, 1956, Company Law Administration Department, Govt. of India; Also see Registrar of Companies Vs. Arunajatai, 1963 (1)Cr.L.J.302.

12. Code of conduct issued by the Institute of Chartered Accountants of India (1963).

13. Report of the Commission of Inquiry on the working of the Dalmia-Jain Group of Companies (1964), Govt. of India, p. 30.

14. Seventh Annual Report on the working of the Indian Companies Act, 1956, Govt. of India (1964) p. 52.

15. See Code of Conduct issued by the Institute of Chartered Accountants of India, pp. 42 - 45.

16. Section 22 read with Schedules I and II to the Chartered Accountants Act, 1949.

17. Sections 277 and 278, The Income Tax Act, 1961. Under section 277 of the Act, any person who delivers an account or statement which is false, and which he either knows, or believes to be false, or does not believe to be true, is liable to prosecution, and on conviction, may be sentenced to simple imprisonment for a term upto six months and/or with fine up to Rs.1000/-

Section 278 makes punishable the abetment of false returns.

18. Sections 177 (furnishing false information), 181 (false statement on oath etc.), 193 (false evidence in judicial proceedings), 196 (using evidence known to be false), 199 (false statement in a declaration etc.) of the Indian Penal Code provide for punishment to varying terms of imprisonment upto seven years and fine.

Abetment of all the above offences is punishable under section 107 of the Penal Code with the same penalty.

19. Malaviya H.D., Audit Business in India: Case for its Nationalization, Socialist Congressman (N.Delhi), September 26, 1963, pp. 35 - 39.

20. Report of the Committee on Prevention of Corruption (1964), p. 109.

21. S.P.Aiyar and V.K.Sinha, Plagiarism, Times of India (Delhi), September 17, 1967.

22. John, V.V., The Art of Non-Teaching, Hindustan Times (Delhi), May 18, 1967.

23. Hindustan Times (Delhi), June 11, 1967.

24. Ibid.

.....

CHAPTER EIGHT

CONCLUSIONS

The volume, nature, extent and causes of the important forms of white collar crime in India have been discussed in the foregoing chapters in broad socio-legal perspective and in particular relation to the problems of enforcement and administration of criminal justice. The fairly widespread prevalence of criminal practices in the occupational activities of the comparatively richer and socially advanced sections of the society has exploded the popular impression of crime as a narrow range of behaviour concentrated in the lower, uneducated class of people. There are far more number and variety of white collar crimes than are ordinarily known, reported, or prosecuted. A good percentage of crimes committed in society falls in the white collar category involving 'respectable' people and resulting in heavy financial loss and extensive moral damage. White collar crimes are indeed more harmful to society than many of the traditional offences under the Penal Code. It is futile to expect the system of criminal justice to be successful in its fight against crime unless the problem of white collar crime is suitably taken note of. The information provided in this survey might help a better understanding of the crime problem in general and promote a clearer appreciation of the role - potentialities and limitations - of criminal sanctions in the attainment of socio-economic justice.

The justification for treating white collar crimes as a separate category deserving differential treatment under

law is self-evident and flows from the very nature of such crimes. They are far more potentially dangerous to society than conventional crimes. They involve greater financial losses. The damage they inflict on public morale and mutual trust is incalculable. Under cover of public ignorance or trust, white collar criminals perpetrate fraud and deception involving enormous sums of money through apparently innocent transactions. Their victims constitute that unorganized body, the public, which because of ineffective resistance affords relative immunity to the criminals from the legal processes. Many white collar crimes are not easy to detect and still more difficult to prove in a criminal court. The economic power, the political influence and the social status the white collar offenders command and enjoy, provide effective protection from prosecutions and punishment. Fine, the ordinary form of punishment provided for white collar crimes, has been found to be inadequate to deter the economically rich criminals from their nefarious activities. In the context of these immunising features of white collar crime and in view of the increasing State regulation of economic activity necessitated by commitment to socio-economic justice and planned use of resources, there is urgent need for objective studies on particular areas of white collar crime in India and the law applicable to it.

The problem of white collar crime has its theoretical significance as well. It has indeed revolutionized the

thinking on crime causation and has given a new dimension to criminological research of the future. Conventional theories of criminal behaviour based on low socio-economic status and inferior biological constitution are clearly inadequate to explain white collar crime. It has to be accepted that a great variety of facts, situations and motivations make up the crime problem and no single theory or formula can explain the vast range of behaviour called 'crime'. Furthermore, the study of white collar crime has provided revealing and instructive information in regard to the use and efficacy of criminal sanctions in the regulation of economic behaviour and in respect of the role and responsibility of the general public in the successful enforcement of criminal laws.

According to the findings arising out of this study, there has been significant increase in white collar crimes since the country achieved Independence. It is, of course, difficult to draw firm conclusions on the degree of criminality in respect of particular occupations on the basis of the available data. White collar crime itself is comparatively of recent origin and police records or crime statistics do not provide information regarding it for reasons already explained. However, it may reasonably be said as a result of the present survey that the incidence of criminality is far greater in business, trade, industry and commerce as compared to other white collar occupations. Of course, the opportunities and temptations for illegal

profit are numerous in business which, perhaps traditionally lack a strong sense of ethical conduct and an organized institutional framework for voluntary enforcement of social responsibilities. The fairly high degree of public complicity and the complicated nature of modern business dynamics have largely insulated business criminality from the processes of law and made the enforcement of economic regulations very difficult. Thus, unlike other criminals, the businessman - criminal survives and prospers in society more easily and thereby jeopardizes economic security and respect for law.

Among the few 'known' business crimes examined in the course of this study, (i) the evasion and avoidance of taxes, and (ii) the manufacture and sale of adulterated food and spurious drugs are found to be fairly widespread in the country. Tax evasion and avoidance and the financial corruption that goes with it are problems of great public importance today particularly because of its disastrous consequences on the financial security and economic development of the country as a whole. Though tax dodging is not exclusively a business phenomenon, yet the business world is substantially responsible for a large proportion of the total tax evaded or avoided in any single year. Taking advantage of the dubious provisions of the criminal law of taxation based upon the distinction between tax evasion and tax avoidance, most businessmen have consistently reduced their tax liability through skilful utilization of every available method.

method. In this process they have violated the spirit of the law and defeated its objective. The result has been an increase pro tanto in the tax burden on the honest tax-payers who do not resort to such practices. The law of taxation and the machinery for the enforcement of tax laws as they stand today, are defective and inadequate in many respects and unless they are perfected with a view to evolve a simple and expeditious method of assessment and collection, the evil of tax dodging may not be effectively met.

The adulteration of food-stuffs, drugs, medicines, cosmetics and other essential consumer commodities of daily use, is so extensive and highly developed in India that it has become a real threat to public safety, health and security. For purposes of getting greater price advantage, the manufacturer or trader uses such cheap substitutes and poisonous preservatives which bring about death, disease and disability in their train to thousands of people. The extremely unsatisfactory enforcement of the Prevention of Food Adulteration Act and the relatively ineffective punishments imposed by courts of law on food adulterators have tended to create a sense of despair and despondency in the minds of the general public. The processes of criminal law seem to require a thorough re-examination in their application to this area of criminality in order to cure the menace of adulteration and redeem the confidence of the public in the efficacy of criminal sanctions.

The problem of adulteration is equally serious in the field of drugs and patent medicines. The clever and ingenious violations of modern drug fakers and spurious drug manufacturers outmanoeuvre the provisions of the law of fraud and cheating. Through means of persuasive and expertly-disguised advertisements, a host of unfounded and imaginery fears are created in the minds of millions of people about their health and appearance which, the manufacturers easily translate into money. According to experts, many of the widely-advertised patent medicines, cosmetics etc., are not only therapeutically ineffective but also positively harmful in particular cases. The makers of some of these popular preparations are guilty not only of poisoning the public mind with a stream of groundless fears, but often of causing incalculable harm by the postponement of proper treatment in cases where serious conditions actually exist and demand treatment of unquestioned effectiveness. Apart from the patients administering drugs to themselves and thereby complicating the disease conditions, self-medication resulting from over-emphesized and indiscriminate publicity of dubious preparations has the effect of promoting drug addiction amongst the public. The State Governments endowed with the responsibility of enforcing the Drugs and Cosmetics Act have not given proper attention to the problem with the result the racket of sub-standard and spurious drugs persists to an astonishing degree. The drugs control machinery remains weak, inadequate and faulty. The punishments awarded to drug fakers are far from deterrent. The findings of the West Bengal Drugs Enquiry Commission, 1964 constitute a serious

indictment on official apathy and indifference to this area of white collar crime which constitutes a grave threat to the life and health of millions of people in this country.

Outside the business world, white collar criminality is found in considerable measure in the civil services and in the political life of the country. The survey indicates an increase in corruption and maladministration in the government during the last two decades. The problem is indeed acute in certain action-laden areas of the Government, both at the Centre and in the States. The sudden expansion of the civil services, the flow of enormous money from different sources into the administration, the controls and regulations necessitated by planned economic development and the political indifference to charges of corruption against high officials of the government have tended to aggravate the evil already prevalent in the administration. The report of the Santhanam Committee on Prevention of Corruption, 1964 observed that the vigilance machinery, and the anti-corruption law are too inadequate to meet the growing menace. Even the Constitutional provisions relating to civil servants were found heavily loaded in favour of the latter that it afforded protection even to dishonest and corrupt officials. The prevalence of political corruption in a big way amongst the popularly elected leaders of the government has further undermined the integrity of the services and the morale of the people. The need for re-organizing the institutional framework and

evolving suitable anti-corruption strategy is keenly felt in the present context and the Administrative Reforms Commission appointed by the Union Government is presently engaged in this task. The evil appears to be endemic in the system and calls for drastic solutions.

Even the professions of Law, Medicine and Education are not outside the pale of criminal influences. Many of them have a high degree of criminality within it. The survey has revealed a number of questionable and grossly unethical practices indulged in by doctors, lawyers, auditors and teachers in the course of their professional activities.

What are the causes for the present increasing trend in white collar criminality ? As has been stated earlier no single theory, formula or generalization can explain the complex behavioural patterns in various kinds of white collar crime. The popular theories connected with poverty, lack of education and personal maladjustments are not generally applicable to white collar criminals who are educated, intelligent and economically well off as compared to their less fortunate brethren. The dominant motive leading to criminal practices amongst the white collar criminals is the desire for inordinate profit, ostentatious consumption and social recognition. An urbanized or semi-urbanized, materialistic society where, the fastest acquisition of wealth irrespective of the fraudulent means adopted for achieving it, is considered

as the highest individual achievement, there would always be situations driving the men of ordinary morals to overlook legal prohibitions coming in their way. It is also true to hold that the extent of criminality in any particular occupation is directly related to the degree of temptations provided and opportunities available to the members in that occupation. The larger incidence of crime in the business world is partly explained by the above-mentioned situation.

The unsatisfactory enforcement of the laws in question has been responsible in a large measure for the prevailing state of white collar crime. For reasons already noted, prosecutions are seldom initiated against white collar criminals for violations of the law. Even in those cases where prosecutions are launched, it has been found that the economically powerful and politically influential criminals adopt every means for delaying and defeating the ends of justice. They do not even hesitate to abuse the well-intentioned procedural and Constitutional protections given to an accused under our legal system. Furthermore, even when found guilty, there is a prevailing tendency on the part of the magistracy to belittle the importance of white collar crimes, treat them as technical deviations only and punish them with negligible fines which have no deterrent effect whatsoever on the offenders or others similarly placed.

It is regrettable to note in this context that there exits in society an amazingly high degree of public complicity in the commission of such crimes. This may be direct by the acceptance of goods, or services not legally entitled, or

indirect by not reporting the commission of crimes they are aware of. The economic and social status of the offender may also have been a decisive factor in shaping the disposition of the public. The result is, while the public revolts spontaneously against a violent crime, it generally takes a subdued and compromising role against white collar crime. This attitude, however, seems to be slowly disappearing and, as evidenced from a public opinion survey conducted in the course of this study[1], there is growing anxiety and resentment in the public mind on the increasing lawlessness amongst the economically superior classes of people. This emerging trend of public resentment against white collar crime has often manifested itself in an increasing demand for governmental regulation, social control, public management or complete nationalization of important segments of economic activity and professional services in India.

While summing up this study some suggestions of a general character may be recommended here which may be further examined and suitably adopted in the repression of white collar crime. Of course, the feasibility of any particular measure will have to be assessed with reference to the socio-economic context in which it is intended to operate.

1. There is an imperative need for a thoughtful and comprehensive re-examination of the substantive criminal law relating to property and the production and distribution of wealth from the point of view of a socialist society envisaged

under the Constitution. The findings of this survey indicate the need for expanding the categories of prohibited behaviour involving fraud and dishonesty as illustrated in cases like tax avoidance, monopolistic activities, sharp and restrictive trade practices, negligent wastage or mismanagement of public property etc.

2. The rules of criminal procedure relating to prosecution and trial of offences and the law of evidence in respect of proof require modifications when applied to white collar crimes. There are legislative provisions already incorporated in certain statutes[2] relaxing or suitably modifying the traditional requirements relating to mens rea, presumption of innocence, onus of proof and proof beyond reasonable doubt. In view of the peculiar difficulties involved in the detection and proof of complex economic offences, it may be desireble to employ more often the principle of shifting the burdern of proof from the prosecution to the defendant on showing a prima facie case.

Trial for white collar crimes often involves complicated issues of fact relating to technical matters and an ordinary criminal court may not be equipped to decide appropriately and expeditiously the issues involved. Therefore, it may be examined whether the factual assessments of the enforcement agencies of the government may be made ordinarily binding on the court unless they

are disproved by the opposite party[3] . In the alternative, special courts consisting of experts in particular areas of economic activity may be set up in different parts of the country having jurisdiction to try particular categories of white collar crime and having power to pass the maximum sentence permissible under the law.

3. There is a strong case forawarding deterrent and exemplary punishments to white collar criminals[4]. Nominal fines are of no consequence against mighty corporations and wealthy criminals. Even the stigma of a criminal does not follow the conviction of a white collar criminal. The result is a tendency on the part of such criminals to take such punishments as part of their occupational hazards and continue with their depredations on society. Administration of criminal justice stands ridiculed in such cases. It is for the legislature to examine this malaise and provide for deterrent punishments for white collar crimes. Forfeiture of property, cancellation of privileges, deprivation of political rights, long periods of imprisonment and extensive publicity of trial reports and conviction[5] are illustrative of the type of punishments that might deter the white collar criminals. It is also necessary for the legislature to provide appropriate criteria for distinguishing greater and lesser degrees of crime and levels of punishment to ward off possible abuse of judicial discretion in the matter of sentences in violation of legislative intention.

4. It is commonly believed that public concern about crime is emotional, erratic and unrealistic and is not helpful in any practical programme of crime prevention. This is a misconceived notion. Public concern about crime, though not always based on any realistic and objective understanding of the situation, can be a very potent and effective force for positive action in reducing crime. No crime prevention strategy today can ignore public involvement in this respect. In the control of economic behaviour particularly, law has necessarily to be assisted by public co-operation, which may take many forms and shapes. But, a necessary pre-requisite for action in this regard is the existence of a well-informed citizenry. It is the duty of public agencies of enforcement to provide the full facts about crime regularly and accurately so that their responses to it may be more balanced and productive of results. This, incidentally, underlines the need for continuous research into the different facets of crime and administration of criminal justice.

CHAPTER EIGHT

REFERENCES AND NOTES

1. In order to assess the attitude of the public towards white collar crimes two questionnaires were prepared (Appendix VIII and Appendix IX) and sent to two hundred persons including lawyers, doctors, technicians, politicians, teachers, government officials and laymen. Sixty two replies were received.

The replies to questionnaire I indicated strong belief in the majority of people regarding the existence of criminal practices on a considerable scale in the manufacture and sale of food and drugs, in big business and in customs, police and taxation departments of the government. Forty to fifty percent of people who have responded to the questionnaire either discounted the existence of crime or expressed their ignorance about it in respect of the Defence Services, the Press, Stock Exchange and Banking.

The replies to questionnaire II are, perhaps more revealing. According to them food and drug adulteration, black marketing and profiteering, company law offences and corruption in the

government are crimes of great social harm and deserved to be punished with deterrent or exemplary punishments. Nearly seventy percent of people recommended the imposition of death and forfeiture of property for adulterators of food and drugs. Many have expressed a sense of alarm and despair at the alleged pervasiveness of white collar crime.

2. Instances of special rules of evidence are:-

Section 5, Prevention of Corruption Act, 1947; Section 14, Essential Commodities Act, 1955; Section 123, Customs Act, 1962; Section 3, Railway Stores (Unlawful Possession) Act, 1955. Also see

Babu Lal Vs. Collector of Customs, A.I.R. 1957 S.C. 877.

3. Hermann Mannheim in his book ' Criminal Justice and Social Reconstruction ' ,(1949) has made out a strong case for adoption of such a procedure in the trial for economic offences. vide pp. 151-152

4. See -

State Vs. Kumari Dhrupati Bhaveni, A.I.R. 1956 Bom,p 6; Indo-China Steam Navigation Co. Vs Jasjit Singh, A.I.R. 1964. S.C. 1140.

5. A requirement that the offender should at his own expense publish as paid advertisement in stated newspapers all the essential circumstances of the

offence, the court's decision on it and the penalties imposed etc., is more likely to achieve the desired results in the enforcement of economic regulations. Such provisions are there in Prevention of Food Adulteration Act, 1954 (Section 16 (2)), Drugs and Cosmetics Act, 1940 (Section 35) and Income-tax Act, 1961 (Section 257). But these provisions are very seldom resorted to in actual cases.

APPENDICES

APPENDIX I

SOME INSTANCES OF UNSOUND COMPANY PRACTICES -CATALOGUE*

(i) Evasion or Avoidance of the requirements of Law:

Apart from the large number of direct evasions of the provisions of the Companies Act for which prosecutions are launched, company managements have evolved indirect and tortuous evasions through unsound company practices which though not always contravene the letter of the law, defeat its purpose and are repugnant to its spirit. Such attempts to by-pass the provisions of the law continue to be committed on an appreciably large scale. Most of these instances related to avoidance or evasion of the restrictions contained in the Act in regard to the appointment of, and remuneration payable to, managerial personnel, appointment of sole agents and intercompany loans and investments.

(ii) Management taking undue advantage of their position and authority:

(a) Property owning companies letting out houses on very low rents to relatives of managements;

(b) Donations to trust belonging to the same industrial group;

(c) Purchase of residential plots by directors out of company funds;

(d) Training relatives of management in foreign countries at company expenses although it did not utilise the trainee's services later on;

*Source: Annual Reports on the working and administration of the Companies Act, 1956, Department of Company Law Administration, Ministry of Finance, Govt.of India.

(e) Loan at high rate of interest from a firm in which all the directors of the company are interested;

(f) In one case the director was instrumental in the purchase by the company of a large number of shares in another company, in which the directors were interested, at a price which was more than double the real value of shares. The company had to write off the whole investment as bad within two years;

(g) Deposit of moneys with banks in which directors are interested. This practice is generally followed ostensibly as a device for channelling the funds of companies, in which the public are substantially interested, to those in which the directors are interested in their personal capacity. It is also used to contravene the provisions of section 295 of the Companies Act, 1956, as such transactions may not always be regarded as "loans" within the meaning of that section;

(h) Allotment of shares to managing agents company and associates at unduly favourable terms to the detriment of the shareholders;

(i) Appointment of a company as Secretary to another company;

(j) Payment of minimum remuneration to managing agents without approval, when the net profits of the company is less;

(k) Appointment of director as sole sales representative;

(l) Companies in the same managerial group, having had no past expenses in the marketing of goods produced by the companies were appointed as sole agents;

(m) Sole selling agents were designated and described as sole distributors in order to evade the provisions of section 294 of the act;

(n) Large uncollected balances were maintained with the sole selling agents, resulting in their indirect financing at the expense of the companies.

(iii) Unusual Accounting practices etc:

(a) In connection with the promotional activities of a company formed for a project estimated to cost approximately Rs.50 lakhs the promoter had amongst other things incurred the following items of expenditure which were sought to be justified as preliminary expenses for the promotion of the company - present of sarees worth Rs.12,000 and other gifts, appointment of persons drawing salary of Rs.5,000/-for a period of more than three years, large sum

spent in connection with travelling expenses and contributions made to one Swamiji;

(b) In another case, it was found that two sets of balance sheets in respect of the same period had been circulated in respect of a company;

(c) In yet another instance, it was seen that a company which was carrying on manufacturing business was also authorised to do investment business against the provisions of Section 372 of the Act.

(d) Filing of non-audited balance-sheets;

(e) Auditor's separate report not brought to the notice of share-holders;

(f) Improper distribution of company's assets;

(g) Refund of share capital by way of loans;

(h) Withholding of sale proceeds of company's assets;

(i) Maintenance of books of account at a place outside the state in which companies are registered;

(j) Persons in control of holding company drawing guarantee commission on loan taken by the subsidiary company and utilising the loan in their interest;

(k) Keeping of excessive funds with charitable Trusts in which directors are interested, instead of keeping their balances with scheduled banks, thus rendering it possible to advance loans or make investments, in violation of the spirit, if not in letter the provisions of sections 295 and 372 of the Act;

(l) Unauthorised contributions to charity;

(m) Distribution of dividends without setting off losses;

(n) Declaration of dividends a second time out of a part year's profits;

(o) Allotment of a fractional share;

(p) Deposits of doubtful security;

(q) Investments of questionable soundness;

(r) Loans by subsidiaries to holding companies;

(s) Loans from an education trust belonging to the same industrial house.

(iv) <u>Unsound practices disclosed in prospectuses etc:</u>

(a) In the prospectus issued by a company shares of the value of about two and a half lakhs of rupees were shown as having been already subscribed. Actually the shares

had been "issued" to a family from which no cash had been received up to the date of the issue of the prospectus. The allotment was subsequently cancelled. This company also allotted the share before the minimum subscription had been raised. Some shares were also allotted to some minor children of a director. The publicity agents of the company, at the instance of the management, informed the press that the issue had been over-subscribed by the public although in reality it was not so.

(b)It was noticed in a prospectus issued by a company that shares which were reserved for subscription on the "firm allotment" basis were included in the number of shares offered to the public for subscription. This was considered to be a misrepresentation of the proposed transaction to mislead the intending investors.

(c)In a statement in lieu of prospectus filed by a company an amount of Rs.2,20,000 was shown as due to be reimbursed to the promoter/director on account of preliminary expenses incurred on him. On scrutiny it was found that the claim was inflated and later reduced to 1,50,000/-. There were similar attempts to remunerate the promoters in the guise of reimbursement of promotional expenses.

(d) Cases where promises were held out by companies in their press announcements with a view to attract public subscriptions, but which could not be honoured, have come to the notice of the Department.

The above mentioned cases of unsound company practices and attempts to by-pass the provisions of the law are only illustrative of the unhealthy trends in company management during recent years. The cases are illustrative and not exhaustive. Every year more and more instances of violations of the spirit of law are detected by the Company Law Administration. This indicates a growing disregard of the sense of fiduciary responsibility on the part of the private corporate sector. The instances detected reveal violation of trust by making misrepresentations. They published false financial statements, erroneous statistics, incorrect advertisements; there was embezzlement and misapplication of funds, and bribery of public officials; there was abuse of position and power by the management to the detriment of the interests of the companies, share-holders and creditors. Many of them are cases of downright dishonesty bordering on criminality.

•••••

APPENDIX II

AN ILLUSTRATIVE LIST OF BUSINESS CRIMES PUNISHABLE UNDER THE INDIAN PENAL CODE AND OTHER SPECIAL ENACTMENTS

I. The Indian Penal Code, 1860 (45 of 1860)

(a)	Tax Evasion:	Sections 177, 181, 191, 192 and 199 read with Section 136, Income-tax Act, 1961.
(b)	Adulteration of Food & Drugs:	Sections 272, 273, 274, 275, 276 and 284.
(c)	Cheating:	Sections 415 - 420.
(d)	Criminal Breach of Trust:	Sections 406, 407 and 409.
(e)	Offences Relating to Documents and to Property Marks:	Sections 465, 468, 474, 477A, 482, 485 and 486.

II. The Essential Commodities Act, 1955 (10 of 1955)

(a)	Hoarding and Blackmarketing:	Section 3 read with Sections 7, 8 and 10.

III. The Imports and Exports (Control) Act, 1947(18 of 1947)

(a)	Offences endangering public economy:	Section 5 read with Exports(Control) Order 1958 and Imports (Control) Order, 1955

IV. Industries (Development and Regulation)Act, 1951 (65 of 1951)

(a) Offences of Preventing or Obstructing Public Economy:	Sections 10(1), 11A, 13(1) 16(2), 18B(3), 18C(2) and 29B(2) read with Section 24 and 24A of the Act.

V. The Customs Act, 1962 (52 of 1962)

(a) Offences Like Smuggling and Endangering of Economic Health of the Country:	Sections 132, 133, 134, 135, 136, and 140.

VI. The Foreign Exchange Regulation Act, 1947.

(a) Offences Against the System of Exchange Control:	Sections 4, 5, 9, 12(2) read with Section 23 of the Act.

VII. The Prevention of Food Adulteration Act,1954(37 of 1954)

(a) Adulteration of Food:	Sections 16, 17 and 18 of the Act.

VIII. The Drugs and Cosmetics Act, 1940 (23 of 1940)

(a) Adulteration and Misbranding of Drugs:	Sections 13, 14, 17, 18, 27, 28, 30 and 34 of the Act.

IX. The Indian Companies Act, 1956.

There are large number of offences under this Act, the most important of which are dealt with under Sections 63, 68, 116, 538, 539, 540, 541, 542, 628, 629 and 630 of the Act.

X. The Income Tax Act, 1961 (43 of 1961)

(a) Evasion of Tax: Sections 276, 277, 278 and 281 of the Act.

XI. The Wealth Tax Act, 1957 (27 of 1957)

Sections 17, 18 and 36 of the Act.

XII. The Expenditure Tax Act, 1957 (29 of 1957)

Sections 16, 17 and 32 of the Act.

XIII. The Central Sales Tax Act, 1956 (74 of 1956)

Sections 9(3), 10 and 13(5) of the Act.

XIV. Super Profits Tax Act, 1963 (14 of 1963)

Sections 10, 11, 19 and 22 of the Act.

XV. The Companies (Profits) Surtax Act, 1964 (7 of 1964)

Sections 8, 20, 21 and 22 of the Act.

••••••••••

A P P E N D I X III

THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES BILL, 1967.

(BILL NO XV OF 1967 *)

A bill to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Eighteenth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement .....

2. Definitions.....

(i) " monopolistic trade practice " means a practice which has, or is likely to have the effect of,-

(i) maintaining prices at an unreasonable level by limiting, reducing or otherwise controlling the production, supply or distribution of any goods of any description or the supply of any services or in any other manner,

(ii) unreasonably preventing or lessening competition in the production, supply or distribution of any goods or in the supply of any services, whether by the adoption of any practice or by pursuing any commercial policy or by any act or omission,

---

* Bill as introduced in the Rajya Sabha. Only certain important provisions of the bill are reproduced here.

(iii) limiting technical development or capital investment to the common detriment or allowing the quality of any goods produced, supplied or distributed in India to deteriorate;

(j) " monopolistic undertaking " means-

(i) a dominant undertaking, or

(ii) an undertaking which, together with one or more independent undertakings, produces, supplies, distributes or otherwise controls not less than one-half of the goods of any description that are produced, supplied or distributed in India, or provides not less than one-half of any services that are rendered in India, and indulges in any monopolistic trade practice, whether such practice is indulged in by itself or by any independent undertaking hereinbefore referred to;

(o) " restrictive trade practice " means a trade practice which has, or may have, the effect of preventing, distorting or restricting competition in any manner and in particular, -

(i) which tends to obstruct the flow of capital or resources into the stream of production, or

(ii) which tends to bring about manipulation of prices, or conditions of delivery or to affect the flow of supplies in the market relating to goods or services in such manner as to impose on the consumers unjustified costs or restrictions.

3. Act not to apply in certain cases .....

CHAPTER II

MONOPOLIES AND RESTRICTIVE TRADE PRACTICES COMMISSION

5. Establishment and Constitution of the Commission. (1) For the purposes of this Act, the Central Government shall establish, by notification in the Official Gazette, a commission to be known as the Monopolies and Restrictive Trade Practices Commission which shall consist of a Chairman and not less than two and not more than eight other members, to be appointed by the Central Government.

(2) The Chairman of the Commission shall be a person who is, or has been or is qualified to be, a Judge of the Supreme Court or of a High Court and the members thereof shall be persons of ability, integrity and standing who have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, industry, public affairs or administration.

(3) Before appointing any person as the member of the Commission, the Central Government shall satisfy itself that the person does not, and, will not have, any such financial or other interest as it likely to affect prejudicially his functions as such member.

6. Conditions of Service of Members .....

7. Removal of Members from Office in certain Circumstances .....

8. Staff of the Commission. The Central Government may appoint a Director of Investigation for making investigations for the purposes of this Act and may, in addition, make provision with respect, to the number of members of the staff of the Commission and their conditions of service.

9. Salaries, etc., to be defrayed out of the Consolidated Fund of India. The salaries and allowances payable to the members and the administrative expenses, including salaries, allowances and pensions, payable to or in respect of officers and other employees of the

Commission, shall be defrayed out of the Consolidated Fund of India.

JURISDICTION, POWERS AND PROCEDURE OF THE COMMISSION

10. Inquiry into Monopolistic or Restrictive Trade practices by Commission. The Commission may inquire into-

(a) any restrictive trade practice-

(i) upon receiving a complaint of facts which constitute such practice from any trade or consumers' association or from any seven or more consumers, or

(ii) upon application made to it by the Registrar or the Director;

(b) any monopolistic trade practice, upon a reference made to it by the Central Government.

11. Investigation by Director before issue of process in certain cases. In respect of any restrictive trade practice of which complaint is made under clause (a) of section 10, the Commission shall, before issuing any process requiring the attendance of the person complained against, cause a preliminary investigation to be made by the Director, in such manner as it may direct, for the purpose of satisfying itself that the complaint requires to be inquired into.

12. Powers of the Commission. (1) The Commission shall, for the purposes of any inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-

(a) the summoning and enforcing the attendance of any witness and examining him on oath;

(b) the discovery and production of any document or other material object producible as evidence,

(c) the reception of evidence on affidavits;

(d) the requisitioning of any public record from any court of office;

(e) the issuing of any commission for the examination of witnesses.

(2) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898.

(3) The Commission shall have power to require any person-

(a) to produce before, and allow to be examined and kept by, an officer of the Commission specified in this behalf, such books, accounts or other documents in the custody or under the control of the person so required as may be specified or described in the requisition, being documents relating to any trade practice, the examination of which may be required for the purposes of this Act; and

(b) to furnish to an officer so specified such information as respects the trade practice as may be required for the purposes of this Act or such other information as may be in his possession or in relation to the trade carried on by any other person.

(4) For the purpose of enforcing the attendance of witnesses the local limits of the Commission's jurisdiction shall be the limits of the territory of India.

13. Orders of Commission may be subject to Conditions, etc.

(1) In making any order under this Act, the Commission may make such provisions not inconsistent with this Act, as it may think necessary or desirable for the proper execution of the

order and any person

order and any person who commits a breach of or fails to comply with any obligation imposed on him by any such provision shall be deemed to be guilty of an offence under this Act.

(2) Any order made by the Commission may be amended or revoked at any time in the manner in which it was made.

(3) An order made by the Commission may be general in its application or may be limited to any particular class of traders or a particular class of trade practices or to a particular trade practice or to a particular locality.

14. Orders where party concerned does not carry business in India — Where any practice substantially falls within monopolistic or restrictive trade practice, or both, relating to the production, supply, distribution or control of goods of any description or the provision of any services and any party to such practice does not carry on business in India, an order may be made under this Act with respect to that part of the practice which is carried on in India.

15. Restriction of Application of Orders in certain Cases.....

16. Sittings of the Commission.....

17. Hearing to be in Public except in Special Circumstances.....

18. Procedure of the Commission.....

19. Proceedings of the Commission to be conducted with expedition.

20. Orders of the Commission to be noted in the Register.....

CHAPTER III

CONCENTRATION OF ECONOMIC POWER

PART A

21. Undertakings to which this part applies. This Part shall apply to-

(a) an undertaking if the total value of-

(i) its own assets, or

(ii) its own assets together with the assets of its inter-connected undertakings, or

(iii) its own assets together with the assets of its inter-connected undertakings and the assets of every other undertaking if such other undertaking and one or more of the inter-connected undertakings aforesaid are inter-connected undertakings,

is not less than twenty crores of rupees.

(b) a dominant undertaking-

(i) where it is a single undertaking, the value of its assets; or

(ii) where it consists of more than one undertaking, the sum-total of the value of the assets of all the inter-connected undertakings constituting the dominant undertaking,

is not less than one crore of rupees.

22. Expansion of Undertakings. (1) Subject to the provisions of section 24, where an undertaking to which this part applies proposes to substantially expand its activities by the issue of fresh capital or by the installation of new machinery or other equipment or in any other manner, it shall, before

taking any action to give effect to the proposal for such expansion, give to the Central Government notice, in the prescribed form, of its intention to make such expansion, stating therein whether it is connected with any other undertaking and if so, giving particulars relating to all the inter-connected undertakings and the scheme of finance with regard to the proposed expansion and such other information as may be prescribed.

(2) Notwithstanding anything contained in any other law for the time being in force, no undertaking shall give effect to any proposal for its expansion unless such proposal has been approved by the Central Government.

Explanation - For the purpose of this section, an undertaking shall be deemed to expand ~~is~~ substantially if, after such expansion, -

(a) in the case of an undertaking to which clause (a) of section 21 applies, -

(i) the value of the assets referred to in the said clause, before the expansion, would result in an increase by not less than twenty-five per cent. of such value, or

(ii) the production, supply or distribution of any goods or the provision of any services by the undertaking or undertakings referred to in the said clause, before the expansion, would result in an increase by not less than twenty-five per cent. of its production, supply or distribution of goods or the provision of services by it;

(b) in the case of an undertaking to which clause (b) of section 21 applies, the production, supply, distribution or control of any goods or the provision by it of any services would result in an increase by not less than twenty-five

per cent. of the value of its production, supply, distribution or control of goods or the provision of services by it before the expansion.

(3) (a) The Central Government may call upon the undertaking concerned to satisfy it that the proposed expansion or the scheme of finance with regard to such expansion is not likely to lead to the concentration of economic power to the common detriment or is not likely to be prejudicial to the public interest in any other manner and thereupon the Central Government may, if it is satisfied that it is expedient in the public interest so to do, by order accord approval to the proposal for such expansion.

(b) If the Central Government is of opinion that no such order as is referred to in clause (a) can be made without a further inquiry, it may refer the application to the Commission for an inquiry and the Commission may, after such hearing as it thinks fit, report to the Central Government its opinion thereon.

(c) Upon receipt of the report of the Commission, the Central Government may pass such orders with regard to the proposal for the expansion of the undertaking as it may think fit.

(d) No scheme of any expansion approved by the Central Government and no scheme of finance with regard to such expansion shall be modified except with the previous approval of the Central Government.

(4) Nothing in this section shall apply to any industrial undertaking (which is not a dominant undertaking) to which section 13 of the Industries (Development and Regulation) Act, 1951 applies, in so far as the expansion relates to production of the same or similar type of goods.

23. Establishment of new undertakings. (1) No person or authority, other than the Central Government, shall, after the commencement of this Act, establish any new undertaking which, when established, would become an inter-connected undertaking of any undertaking to which clause (a) of section 21 applies, except under, and in accordance with, the previous permission of the Central Government.

Provided that a government, other than the Central Government, may, with the previous permission of the Central Government, establish a new undertaking which, when established, would become an inter-connected undertaking of an undertaking to which clause (a) of section 21 applies.

(2) Any person or authority intending to establish a new undertaking referred to in sub-section (1) shall, before taking any action for the establishment of such undertaking, make an application to the Central Government in the prescribed form for that Government's approval to the proposal of establishing any undertaking and shall set out in such application information with regard to the inter-connection, if any, of the new undertaking (which is intended to be established) with every other undertaking, the scheme of finance for the establishment of the new undertaking and such other information as may be prescribed.

(3) (a) The Central Government may call upon the person or authority to satisfy that the proposal to establish a new undertaking or the scheme of finance with regard to such proposal is not likely to lead to the concentration of economic power to the common detriment or is not likely to be prejudicial

to the public interest in any other manner and thereupon the Central Government may if it is satisfied that it is expedient in the public interest so to do, by order accord approval to the proposal.

(b) If the Central Government is of opinion that no such approval as is referred to in clause (a) can be made without further inquiry, it may refer the application to the Commission for an inquiry and the Commission may, after such hearing as it thinks fit, report to the Central Government its opinion thereon.

(c) Upon receipt of the report of the Commission, the Central Government may pass such order with regard to the proposal for the establishment of a new undertaking as it may think fit

(d) No scheme of finance on the strength of which the establishment of a new undertaking has been approved by the Central Government shall be modified except with the approval of that Government.

25. Merger, Amalgamation and take-over (1) Notwithstanding anything contained in any other law for the time being in force, no scheme of merger or amalgamation of an undertaking to which this Part applies with any other undertaking or where a scheme of merger or amalgamation is proposed between two or more undertakings, if as a result of such merger or amalgamation, an undertaking would come into existence to which clause (a) or clause (b) of section 21 would apply, shall be sanctioned by any court or be recognized for any purpose or be given effect to unless the scheme for such merger or amalgamation has been approved by the Central Government under this Act.

(2) If any undertaking to which this Part applies frames a scheme of merger or amalgamation with any other undertaking, or

where a scheme of merger or amalgamation is proposed between two or more undertakings, if as a result of such merger or amalgamation, an undertaking would come into existence to which clause (a) or clause (b) of section 21 would apply, it shall, before, taking any action to give effect to the proposed scheme, make an application to the Central Government in the prescribed form with a copy of the scheme annexed thereto, for the approval of the scheme.

(3) Nothing in sub-section (1) or sub-section (2) shall apply to the scheme of merger or amalgamation between such inter-connected undertakings as are not dominant undertakings and as produce the same goods.

(4) If an undertaking to which this Part applies proposes to acquire by purchase, take over or otherwise the whole or part of an undertaking which will or may result either -

(a) in the creation of an undertaking to which this Part would apply; or

(b) in an undertaking becoming an inter-connected undertaking of an undertaking to which this Part applies,

it shall, before giving any effect to its proposals, make an application in writing to the Central Government in the prescribed form of its intention to make such acquisition, stating w therein information regarding its inter-connection with other undertakings, the scheme of finance with regard to the proposed acquisition and such other information as may be prescribed.

(5) No proposal referred to in sub-section (4) which has been approved by the Central Government and no scheme of finance

with regard to such proposal shall be modified except with the previous approval of the Central Government.

(6) On receipt of an application under sub-section (2) or sub-section (3), the Central Government may, if it thinks fit, refer the matter to the Commission for an inquiry and the Commission may, after such hearing as it thinks fit, report to the Central Government its opinion thereon.

(7) On receipt of the xCommission's report the Central Government may pass such orders as it may think fit.

(8) Notwithstanding anything contained in any other law for the time being in force, no proposal to acquire by purchase, take-over or otherwise of an undertaking to which this Part applies shall be given effect to unless the Central Government has made an order according its approval to the proposal.

(9) Nothing in sub-section (4) shall apply to the acquisition by an undertaking, which is not a dominant undertaking, of another undertaking, if both such undertakings produce the same goods:

Provided that nothing in this sub-section shall apply if as a result of such acquisition an undertaking comes into existence to which clause (a) or clause (b) of section 21 would apply.

25. Merger, Amalgamation or take-over in contravention of law. Where any merger, amalgamation or take-over is being or has been effected in contravention of the provisions of section 24, the Central Government may, after such consultation with the Commission as it may consider necessary, direct, without prejudice to any penalty which may be imposed under this Act for such contravention, the undertaking concerned to cease and desist from such contravention, to

divest itself of the stock or other share capital or assets so acquired and to carry out such further directions as the Central Government may, in all the circumstances of the case, issue.

26. Directors of Undertakings not to be Appointed Directors of competing and Banking undertakings. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, not person, who is a director of an undertaking, shall be appointed, after the commencement of this Act, as a director of any other undertaking to which this Part applies or an undertaking engaged in the same line of business or of a banking company except with the prior approval of the Central Government and any appointment contrary to the provisions of this section shall be void:

Provided that the approval of the Central Government shall not be necessary in the case of appointment of directors of undertakings which are not banking companies if the undertakings concerned are inter-connected undertakings.

(2) Notwithstanding anything contained in sub-section (1), no act done by a person as a director shall be invalid merely on the ground that his appointment was void by reason of this section or of any provision of this Part:

Provided that nothing in this section shall be deemed to give validity to any act done by a director after his appointment has been shown to the undertaking and the director concerned to be void.

(3) Notwithstanding anything to the contrary contained in any other law for the time being in force, every director holding such directorship as is not consistent with the provisions of this section shall, unless his appointment expires earlier, obtain within a period of one year from the commencement of this Act, the approval of the Central Government to such appointment and if he fails to do so, his appointment shall, on the expiry of the said period, become void.

(4) The provisions of sub-sections (1), (2) and (3) shall, as far as may be, apply to partners of any firm which is an undertaking within the meaning of this Act, as they apply to directors of companies.

PART B

27. Division of Undertaking .....

PART C

28. Matters to be considered by the Central Government before according approval.....

29. Opportunity of being heard.....

CHAPTER IV

MONOPOLISTIC TRADE PRACTICES

30. Investigation by Commission of Monopolistic Practices. (1) Where it appears to the Central Government that one or more monopolistic undertakings are indulging in any monopolistic trade practice, or that, monopolistic trade practices prevail in respect of any goods or services, that Government may refer the matter to the Commission for any inquiry and the Commission shall, after

such hearing as it thinks fit, report to the Central Government its findings thereon.

(2) If as a result of such inquiry, the Commission makes a finding to the effect that, having regard to the economic conditions prevailing in the country and to all other matters which appear in particular circumstances to be relevant, the trade practice operates or is likely to operate against the public interest, the Central Government may, notwithstanding anything contained in any other law for the time being in force, pass such orders as it may think fit to remedy or prevent any mischiefs which result or may result from such trade practice.

(3) Any order made by the Central Government under this section may include an order -

(a) regulating the production, supply, distribution or control of any goods by the undertaking or the control or supply of any service by it and fixing the terms of sale or supply thereof;

(b) prohibiting the undertaking from resorting to any act or practice or from pursuing any commercial policy which prevents or lessens, or is likely to prevent or lessen, competition in the production, supply or distribution of any goods or provision of any services;

(c) fixing standards for the goods used by the undertaking;

(d) declaring unlawful, except to such extent and in such circumstances as may be provided by or under the order, the making or carrying out of any such agreement as may be specified or described in the order;

(e) requiring any party to any such agreement as may be so specified or described to determine the agreement within such time as may be so specified, either wholly or to such extent as may be so specified.

31. Monopolistic Practice when to be deemed to be Prejudicial to Public interest. A monopolistic trade practice shall be deemed to be prejudical to the public i interest if the effect of the trade practice, having regard to the economic conditions prevailing in the country and to all other matters which appear to the Central Government ot be relevent in particular circumstances, is or would be -

(a) to increase unreasonably the cost relating to the production, supply or distribution of goods or the performance of any service;

(b) to increase unreasonably-

(i) the prices at which goods are sold, or

(ii) the profits derived from the production, supply or distribution of the goods or from the performance of any service;

(c) to reduce or limit unreasonably competition in the production, supply or distribution of any goods (including their sale or purchase) or in the provision of any service;

(d) to limit or prevent unreasonably the supply of goods to consumers, or in the provision of any service;

(e) to result in a deterioration in the quality of any goods or in the performence of any service.

CHAPTER V

REGISTRATION OF AGREEMENTS RELATING TO RESTRICTIVE TRADE PRACTICES

32. Registrable agreements relating to Restrictive Trade Practices. (1) Any agreement relating to a restrictive trade practice falling within one or more of the following categories shall be subject to registration in accordance with the provisions of this Chapter, namely:-

(a) any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;

(b) any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;

(c) any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;

(d) any agreement to purchase or sell goods or to tender for the sale or purchase of goods only at prices or on terms or conditions agreed upon between the sellers or purchasers;

(e) any agreement to grant or allow concessions or benefit, including allowances, discount, rebates or credit in connection with or by reason of, dealings;

(f) any agreement to sell goods on condition that the prices to be charged on re-sale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged;

(g) any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal of the goods;

(h) any agreement not to employ or restrict the employment of any method, machinery or process in the manufacture of goods;

(i) any agreement for the unjustifiable exclusion from any trade association of any person carrying on or intending to carry on, in good faith the trade in relation to which the trade association is formed;

(j) any agreement to sell goods at unreasonably low prices for the purpose of eliminating competition or a competitor;

(k) any agreement not hereinbefore referred to in this section which the Central Government may, by notification in the Official Gazette, specify for the time being as being one relating to a restrictive trade practice within the meaning of this sub-section pursuant to any recommendation made by the Commission in this behalf;

(l) any agreement to enforce the carrying out of any such agreement as is referred to in this sub-section.

(2) The provisions of this section shall apply, so far as may be, in relation to agreements making provision for services as they apply in relation to agreements connected with the production, supply, distribution or control of goods.

(3) No agreement falling within this section shall be subject to registration in accordance with the provisions of this Chapter if it is expressly authorised by or under any law for the time being in force or has the approval of the Central Government or if the Government is a party to such agreement.

33. Registrar of Restrictive Trade Agreements. For maintaining a register of agreements subject to registration under this Act and for performing the other functions imposed on him by this Act, there shall be appointed by the Central Government an ~~offi~~ xxxxx

officer to be known as the Registrar of Restrictive Trade Agreements.

34. Registration of Agreements.. .....

35. Keeping the Register .....

CHAPTER VI

CONTROL OF CERTAIN RESTRICTIVE TRADE PRACTICES

36. Investigation into restrictive Trade practices by Commission. (1) The Commission may inquire into any restrictive trade practice, whether the agreement, if any, relating thereto has been registered under section 34 or not, which may come before it for inquiry and, if, after such inquiry it is of opinion that the practice is prejudicial to the public interest, the Commission may, by order, direct that -

(a) the practice shall be discontinued or shall not be repeated,

(b) the agreement relating thereto shall be void in respect of such restrictive trade practice or shall stand modified in respect thereof in such manner as may be specified in the order.

(2) The Commission may, instead of making any order under this section, permit the party to any restrictive trade practice, if he so applies, to take such steps within the time specified in this behalf by the Commission as may be necessary to ensure that the trade practice is no longer prejudicial to the public interest, and in any such case, if the Commission is satisfied that the necessary steps have been taken within the time specified, it may decide not to make any order under this section in respect of that trade practice.

(3) No order shall be made under sub-section (1) in respect of -

(a) any agreement between buyers relating to goods which are bought by the buyers for consumption and not for ultimate re-sale whether in the same or different form, type or specie or as constituent of some other goods;

(b) a trade practice which is expressly authorised by any law for the time being in force.

(4) Notwithstanding anything contained in this Act, if the Commission, during the course of an inquiry under sub-section (1) finds that a monopolistic undertaking is indulging in restrictive trade practices, it may, after passing such orders under sub-section (1) or sub-section (2) with respect to the restrictive trade practices as it may consider necessary, submit the case along with its findings thereon to the Central Government with regard to any monopolistic trade practice for such action as that Government may atake under section 30.

37. Trade practices when deemed to be prejudicial to Public interest. A restrictive trade practice shall be deemed to be prejudicial to the public interest if, in the opinion of the Commission, the effect of the practice, having regard to the economic conditions prevailing in the country and to all other matters which appear to the Commission to be relevant in particular circumstances, is or would be -

(a) to increase unreasonably the cost relating to the production, supply or distribution of goods or the performance of any service;

(b) to increase unreasonably -

(i) the prices at which goods are sold, or

(ii) the profits derived from the production, supply or distributic of the goods or from the performance of any service;

(c) to reduce or limit unreasonably competition in the production, supply or distribution of any ....

goods (including their sale or purchase) or in the provision of any service;

(d) to limit or prevent unreasonably the supply of goods to consumers, or in the provision of any service;

(e) to result in a deterioration in the quality of any goods or in the performance of any service.

38. Special conditions for avoidance of Conditions for Maintaining re-sale Prices. (1) Without prejudice to the provision of this Act with respect to registration and to any of the powers of the Commission or of the Central Government under this Act, any term or condition of a contract for the sale of goods by a person to a wholesaler or retailer or any agreement between a person and a wholesaler or retailer relating to such sale shall be void in so far as it purports to establish or provide for the establishment of minimum prices to be charged on the re-sale of goods in India.

(2) After the commencement of this Act, no supplier of goods whether directly or through any person or association of persons acting on his behalf shall notify to dealers or otherwise publish on or in relation to any goods, a price stated or calculated to be understood as the minimum price which may be charged on the re-sale of the goods in India.

(3) This section shall apply to patented articles (including articles made by a patented process) as it applies to other goods and notice of any term or condition which is void by virtue of this section or which would be so void if included in a contract of sale or agreement relating to the sale of such article shall be of no effect for the purpose of limiting the right of a dealer to dispose of that article without infringement of the patent:

Provided that nothing in this ection shall affect the

validity as between the parties and their successors, of any term or condition of a licence granted by the proprietor of a patent or by a licensee under any such licence or of any assignment of a patent so far as it regulates the price at which articles produced or processed by the licensee or the assignee may be sold by him.

Explanation - In this section and in section 39, the term 'Supplier' in relation to supply of any goods, means a person who supplies goods to any person for the ultimate purpose of re-sale and includes a wholesaler, and the term " dealer" includes a supplier and a retailer.

39. Prohibition of other measures for maintaining re-sale prices. (1) Without prejudice to the provisions of this Act with respect to registration and to any of the powers of the Commission or of the Central Government under this Act, no supplier shall withhold supplies of any goods from any wholesaler or retailer seeking to obtain them for re-sale in India on the ground that the wholesaler or retailer -

(a) has sold in India at a price below re-sale price, goods obtained, either directly or indirectly, from that supplier, or has supplied such goods, either directly or indirectly, to a third party who had done so; or

(b) is likely if the goods are supplied to him to sell them in India at a price below that price or supply them, either directly or indirectly, to a third party who would be likely to do so.

(2) Nothing contained in sub-section (1) shall render it unlawful for a supplier to withold supplies of goods from any wholesaler or retailer or to cause or procure another supplier to do so if he has reasonable cause to believe that the wholesaler or the retailer,

as the case may be, has been using as loss leaders any goods of the same or a similar description whether obtained from that supplier or not.

(3) A supplier of goods shall be deemed to be withholding supplies of goods from a dealer if he -

(a) refuses or fails to supply those goods to the order of the dealer;

(b) refuses to supply those goods to the dealer except at prices, or on terms or conditions as to credit, discount or other matters which are less favourable than those at or on which he normally supplies those goods to other dealers carrying on business in similar circumstances; or

(C) treats a dealer, in spite of a contract with such dealer for the supply of goods, in a manner less favourable than that in which he normally treats other dealers in respect of time or methods of delivery or other matters arising in the performance of the contract.

(4) A supplier shall not be deemed to be witholding supplies of goods on any of the grounds mentioned in sub-section (1), if, in addition to that ground, he has any other ground which alone ground would entitle him to withold such supplies.

Explanation I - " Re-sale price" in relation to sale of goods of any description, means any price notified to the dealer or otherwise published by or on behalf of the supplier of the goods in question (whether lawfully or not) as the price or minimum price which is to be charged on, or is recommended as appropriate for, a sale of that description or any price prescribed or purporting to be prescribed for that purpose by any contract or agreement between the wholesaler or retailer and any such supplier .

Explanation II - A wholesaler or retailer is said to use goods as loss leaders when he re-sells them otherwise than in a genuine seasonal or clearance sale not for the purpose of making a profit on the re-sale but for the purpose of attracting to the establishment at which the goods are sold, customers likely to purchase other goods or otherwise for the purpose of advertising his business.

44. Penalty for Contravention of Section 22. If any person contravenes the provisions of section 22 or any order made thereunder, he shall be punishable with fine which may extend to rupees one lakh.

45. Penalty for Contravention of Section 23 or section 24 or section 25 or section 27 If any person contravenes the provisions of section 23, or section 24, or section 25 or section 27 he shall be punishable with fine which may extend to rupees one Lakh, and where the offence is a continuing one, with a further fine which may

extend to one thousand rupees for every day after the first during which such contravention continues.

46. Penalty for Contravention of Section 26 — If any person contravenes, without any reasonable excuse, the provisions of section 26, he shall be punishable with fine which may extend to two thousand rupees, and where the offence is a continuing one, with a further fine which may extend to two hundred rupees for every day, after the first, during which such contravention continues.

47. Penalty for failure to Register Agreements. — If any person fails, without reasonable excuse, to register an agreement which is subject to registration under this Act, he shall be punishable with fine which may extend to five thousand rupees and where the offence is continuing one, with a further fine which may extend to five hundred rupees for every day, after the first, during which such failure continues.

48. ~~XXI~~ Penalty for Offences in relation to ~~f~~ Furnishing of Information. — (1) If any person fails, without reasonable cause, to furnish any information required under section 42 or to comply with any notice duly given to him under section 41, he shall be punishable with imprisonment for a term which may extend to three months, ~~xx~~ or with fine which may extend to two thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to one hundred rupees for every day after the first during which such failure continues.

(2) If any person, who furnishes or is required to furnish any particulars, documents or any information -

(a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material

particular; or

(b) omits to state any material fact knowing it to be material; or

(c) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid,

he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

49. Penalty for offences in relation to Orders under the Act — If any person contravenes any order made under section 13 or section 30 or section 36, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first, during which such contravention continues.

50. Penalty for Offences in relation to re-sale price maintenance. — If any person contravenes the provisions of section 38 or section 39, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five thousand rupees, or with both.

51. Penalty for wrongful disclosure of information. — If any person discloses an information in contravention of section 59, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

52. Offences by Companies. — (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge .....

of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly ;

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punsihed accordingly.

Explanation - For the purposes of this section-

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) " director" in relation to a firm, means a partner in the firm.

CHAPTER IX

APPENDIX - IV

THE COMPANIES (AMENDMENT) BILL, 1968, BILL NO 53 of 1968.

(AS INTRODUCED IN LOK SABHA ON 10TH MAY, 1968)

STATEMENT OF OBJECTS AND REASONS

On the Ist December, 1967, an assurance was given to the Lok Sabha that Government would bring forward during the next following budget session of Parliament a Bill to ban contributions by companies to any political party, or for any political purpose to any individual or body and to abolish the system of management of companies by managing agents. The Bill seeks to fulfil the assurance. It also seeks to abolish simultaneously the system of management of companies by secretaries and treasurers which is akin to the system of management of companies by managing agents.

2 The propriety of companies making contributions to any political party, or for any political purpose to any individual or body has for some time been the subject of discussion both inside and outside the Parliament. A view has been expressed that such contributions have a tendency to corrupt political life and to adversely affect healthy growth of democracy in the country, and it has been gaining ground with the passage of time. It is, therefore, proposed to ban such contributions.

3 Section 324 of the Companies Act, 1956 empowers the Central Government to notify that companies engaged in specified classes of industry or business shall not have managing agents. Under the Rules framed thereunder, Government appointed the Managing Agency Enquiry Committee to enquire into the desirability of applying the said provisions to companies engaged in established industries or any other industry or business as may be deemed fit by the Committee. In pursuance of the Report of the Committee submitted on the 16th March, 1966, Government issued a notification to the effect that the term of office of a managing agent of any company in the specified industries shall expire at the end of three years from the 2nd April, 1967.

The Monopolies Inquiry Commission observed that the system of managing agencies was one of the most important causes which hastened the process of concentration of economic power in India.

Taking all the factors into consideration, it is proposed to abolish the system of management of companies by managing agents altogether at the same time as in the case of specified industries referred to above.

4 The Managing Agency Enquiry Committee observed that, at one time, the institution of secretaries and treasurers was thought of as a suitable alternative to the managing agency system but for all practical purposes secretaries and treasurers exist only in those cases where managing agents already in existence had to shed

some of the managed companies in view of the limit of ten on the total number of companies that a managing agent can manage. The Committee did not seem any particular gain in such a change. Secretaries and treasurers can be given all the powers and privileges of a managing agent except that they (i.e. the former) cannot appoint their representative on the Board of Directors of the managed company, and cannot draw more than 7½ per cent. as their commission while the managing agents can draw up to 10 per cent. of the net profit. It would thus be obvious that no useful purpose would be served by abolishing the managing agency system alone if the resultant void is to be filled up by the secretaries and treasurers. Hence the Government proposes to abolish the system of management of companies by secretaries and treasurers simultaneously with the abolition of the system of management of companies by managing agents.

A

BILL

further to amend the Companies Act, 1956

Be it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:-

1. Short Title — This Act may be called the Companies(Amendment) Act, 1968.

2. Definition — In this Act, unless the context otherwise requires," appointed day" means the 3rd day of April, 1970.

3. Substitution of Section 293 A. — For section 293A of the Companies Act, 1956 (hereinafter referred to as the principal Act), the following section shall be substituted, namely,

Prohibition regarding making of political contributions — " 293A (1) Notwithstanding anything contained in this Act, neither a company in general meeting nor its Board of directors shall, after the commencement of the Companies(Amendment) Act, 1968, contribute any amount or amounts -

(a) to any political party, or

(b) for any political purpose to any individual or body.

(2) If a company contravenes the provisions of

of sub-section (1), then-

(i) the company shall be punishable with fine which may extend to five thousand rupees; and

(ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine."

(4) Insertion of new section 324 A. After section 324 of the principal Act, the following section shall be inserted, namely:-

Abolition of managing agencies and secretaries and treasurers. " 324A (1) Notwithstanding anything contained in this Act or in the memorandum or articles of association or in any contract to the contrary where any company has, on the appointed day, a managing agent or secretaries and treasurers, the term of office of such managing agent or, as the case may be, the secretaries and treasurers shall expire, if it does not expire earlier, on the appointed day.

(2) No company shall appoint or re-appoint any managing agent or secretaries and treasurers on or after the appointed day."

5. Amendment of section 365. In section 365 of the principal Act, in clause (c), after the word and figures " section 324," the figures and letter "324A," shall be inserted.

6. Cesser of certain provisions of the Act. On and from the appointed day, so much of the provisions of the principal Act as relate to managing agents and secretaries and treasurers shall cease to have effect except as respects things done or omitted to be done under those provisions before such cesser.

APPENDIX V

OFFENCES NOTIFIED BY THE CENTRAL GOVERNMENT UNDER SECTION3 OF THE DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946.

SOURCE: Report of the Committee on Prevention of Corruption, Government of India(1964)-Appendix IV, Page 299

NOTIFICATION

G.S.R. 305:- In exercise of the powers conferred by section 3 of the Delhi Special Police Establishment Act, 1946 (XXV of 1946), and in supersession of the notification of the Government of India in the Ministry of Home Affairs No. 7/5/55-AVD dated the 6th November, 1956, as amended from time to time, the Central Government hereby specifies the following offences and classes of offences for the purpose of the said section, namely:-

(a) Offences punishable under sections 161, 163, 163, 164, 165, 165A, 166, 167, 168, 169, 182, 193, 197, 198, 201, 204, 211, 218, 231, 232,233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258,259, 260, 261, 262, 263, 263A, 379, 380, 381, 382, 384, 385, 386, 387, 388, 389,403, 406, 407, 408, 409, 411, 412, 413, 414, 417, 418, 419, 420, 465, 466, 467, 468, 471, 472, 474, 473, 474, 475, 476, 477A, 489A 489B, 489C, 489D and 489E of the Indian Penal Code, 1860 (XLV of 1860);

(b) Offences punishable under the Prevention of Corruption Act, 1947 (II of 1947);

(c) Offences punishable under the Defence of India Act 1962 and the Defence of India Rules framed thereunder;

(d) Offences punishable under the Imports and Exports (Control) Act, 1947 (XVIII of 1947);

(e) Offences punishable under the Foreign Exchange Regulation Act, 1947 (VII of 1947);

(f) Offences punishable under sections 51, 52, 55 and 56 of the Indian Post office Act, 1898 (VI of 1898);

(g) Offences punishable under sections 63, 68, 116, 538, 539, 540, 541, 542, 628, 629 and 630 of the Companies Act, 1956 (I of 1956);

(h) Offences punishable under sections 104 and 105 of the Insurance Act 1938 (IV of 1938);

(i) Offences punishable under the Indian Official Secrets Act, 1923 (XIX of 1923) ;

(j) Offences punishable under sections 7 and 8 of the Essential Commodities Act, 1955 (X of 1955) and conspiracies in relation thereto or in connection therewith ;

(k) Offences punishable under section 24(I)(iii) of the Industries (Development and Regulation) Act, 1951 (LXV of 1951) and conspiracies in relation thereto or in connection therewith;

(l) Offences punishable under items 26, 72, 74, 75, 76, 76A, 76B, 77, 78, 79, 80 and 81 of the Schedule to section 167 of the Sea Customs Act, 1878 (VIII of 1878);

(m) Offences punishable under sections 5 and 7 of the Land Customs Act, 1924 (XIX of 1924);

(n) Offences punishable under the Indian Wireless Telegraphy Act, 1933 (XVII of 1933);

(o) Offences punishable under the Telegraph Wires (Unlawful possession) Act, 1950 (LXXIV of 1950);

(p) Offences punishable under the Railway stores (Unlawful possession) Act, 1955 (LI of 1955);

(q) Offences punishable under section 27 the Indian Telegraph Act, 1885 (XIII of 1885) ;

(r) attempts, abetments and conspiracies in relation to or in connection with the offences mentioned in clauses (a) to (i) and clauses (l) to (q) and any other offences committed in the course of the same transaction arising out of the same facts.

APPENDIX VI

A NOTE ON THE VIGILANCE ORGANISATION IN THE CENTRAL GOVERNMENT*

The agencies responsible for implementing the anti-corruption activities of the Central Government till 1963 were:

i) The administrative Vigilance Division in the Ministry of Home Affairs;

ii) The Vigilance units set up in the respective Ministries/ Departments and their attached and subordinate offices, and in the public sector undertakings;

iii) The Delhi Special Police Establishment (now part of the Central Bureau of Investigation).

The shape of the Vigilance activities till then was in brief as follows:-

i) Except when the Special Police Establishment start an enquiry or investigation on their own, the administrative Ministry decides whether it should take any action on a complaint or suspicion of dishonesty, or other irregularity and if it decides not to take any action, the matter rests there;

ii) If it thinks that an inquiry is called for it either asks an officer of the Department to look into the matter or hands over the case to the Special Police Establishment either for a preliminar inquiry or for instituting a regular case and investigating it;

iii) When the result of the preliminary departmental inquiry is available, the Ministry itself again takes a decision whether the matter should be closed or whether a regular departmental enquiry should be held, or the matter handed over to the Special Police

---

* Based on the Report of the Committee on Prevention of Corruption, Government of India (1964).

Establishment for instituting a case. It it decides to close the matter, the Administrative Vigilance Division of the Ministry of Home Affairs does not normally come into the picture at all. If a regular departmental inquiry is decided upon, the case is usually made over to one of the commissioners for departmental inquiries, particularly if it relates to gazetted officers or arises out of an investigation made by the Special Police Establishment. If the inquiry is made by one of the commissioners the final decision is taken by the Ministry, usually without consulting the Administrative Vigilance Division though, of course, the Union Public Service Commission is consulted when necessary ;

iv) In case made over to them the Special Police Establishment recommend one or the other of the following courses of action;

a) Criminal prosecution,

b) a regular departmental inquiry or

c) such other minor action as the Ministry may consider appropriate.

v) Where criminal prosecution is recommended, sanction orders of the President or some other prescribed authority are issued by the Administrative Vigilance Division, but the substantive decision whether a sanction should be accorded is taken by the Ministry concerned. If a Ministry is not inclined to accept the Special Police Establishment's recommendation, the matter comes to the Administrative Vigilance Division for what can be best described as mediation; and

vi) In regard to punishment on the result of a departmental inquiry the Union Public Service Commission's advice, where sought, is usually accepted. In other cases, the Ministry concerned takes

the final decision without consulting the Administrative Vigilance Division or the Special Police Establishment. However, where the inquiry had been made by a Commission, the punishment imposed is reported to the Administrative Vigilance Division, who, in suitable cases ask for a review."

Thus it would appear that the Administrative Vigilance Division functioned substantively in an advisory capacity. During a little over eight years of its existence, the Administrative Vigilance Division dealt with 82,000 odd complaints of corruption, bribery and disciplinary offences, and investigated on its own into another 63,000- odd suspected cases. The work of the Vigilance Division resulted in 6,449 Government servants including 178 gazetted officers, receiving 'major penalties' like dismissal and compulsory retirement between April 1, 1957, and December 31, 1963. Another 61,639 Government servants including 1,661 gazetted officers, received'minor penalties' during the period.

The Committee on Prevention of Corruption felt the arrangements to be inadequate on the following grounds and recommended many modifications:

i) The system consisting of the Administrative Vigilance Division in the Home Ministry and Vigilance officers in all the Ministries and Departments was mainly intended to investigate and punish corruption and misuse of authority by individual members of the services under the Government of India . While this was indispensable, the Committee felt that the Central Vigilance Organization should be expanded so as to deal with complaints of failure of justice or oppression or abuse of authority suffered by the citizens, though it might be difficult to attribute them to any particular official or officials. These abuses might result

from the procedure and attitudes of particular departments or sets of officials. The committee considered that the problem of maintaining integrity in administration could not be viewed in isolation from the general administrative processes. In order to deal effectively with the problem, it was necessary to take into account the root causes, of which, the most important is the wide discretionary power which had to be exercised by the Executive in carrying on the complicated work of modern Administration in a Social Welfare State.

ii) There was no organic relation developed between the Administrative Vigilance Division and the Vigilance Officers of the various departments. In some of the departments the vigilance officers were taking a keen interest in their work while in others they did not take their responsibilities in this matter seriously. It was also essential to evolve and apply common standards in matters relating the prosecution, departmental action and the award of punishment. In short, it was imperative to put the entire Vigilance Organisation on a proper and adequate basis without in any way undermining the general principle that the Secretaries and Heads of Departments were primarily responsible for the purity, integrity and efficiency of their departments. The Committee, therefore, recommended the setting up of a Central Vigilance Commission with a branch that would deal with general complaints and redress and another branch to deal with vigilance activities. The Committee also recommended that certain powers similar to those under sections 4 and 5 of the Commission of Inquiry Act, 1952, should be conferred on the Central Vigilance Commissioner so that he might undertake an enquiry into transactions in which public servants were suspected or alleged to have acted for improper purposes or in a corrupt manner.

The main recommendations of the Santhanam Committee may be summerised as follows:-

i) The Central Vigilance Commission should in its functioning be independent of Government and may not be answerable to any Minister even though administratively placed under the Ministry of Home Affairs.

ii) It should deal comprehensively with two of the major problems of administration, namely -

a) prevention of corruption and maintenance of integrity, and

b) ensuring just and fair exercise of administrative powers vested in various authorities by statutory rules or by non-statutory executive orders.

iii) The powers and responsibilities in disciplinary matters which are at present decentralised should in the main be centralised in the Commission, the only exception being the power given to the Delhi Police Establishment to make preliminary inquiries or to institute and investigate a regular case whenever they consider it necessary to do so.

iv) The Central Vigilance Commission should consist of three Directorates, one to deal with general complaints of citizens (Directorate of General Complaints and Redress) another to deal with all vigilance matters (Directorate of Vigilance) and the third the Central Police Organisation which would exercise the powers now exercised by the Delhi Special Police Establishment till such time as the Central Bureau of Investigation is set up (The Central Bureau of Investigation was set up on Ist April, 1963).

The Government of India accepted the recommendation of the Committee and set up a Central Vigilance Commission in December 1963

with a retired Chief Justice of the Mysore High Court, Shri [redacted] Sreenivasa Rau, as the first Vigilance Commissioner. It was also decided that the Central Vigilance Commission will have, in the sphere of vigilance, a status and a role broadly corresponding to those of the Union Public Service Commission. It will have extensive functions designed to ensure that complaints of corruption or lack of integrity on the part of the public servants are given prompt and effective attention, and that the offenders are brought to book without fear or favour. The commission can undertake any inquiry into transaction in which public servants are suspected or alleged to have acted for an improper purpose or in a corrupt manner. The Commission would normally get inquiries or investigation made by the Central Bureau of Investigation, the Commissioner for Departmental Inquiries or the Departmental authorities. In exceptional cases where the Commission wishes to make an enquiry itself the Government may appoint it a Commission of enquiry under the Commission of Inquiry Act.

Following the Centre, most of the States have also set up Vigilance Commissions modelled on the Central Commission.

APPENDIX VII

THE LOKPAL AND LOKAYUKTAS BILL, 1968, BILL NO 51 of 1968 *

(As introduced in Lok Sabha on 9 May, 1968)

STATEMENT OF OBJECTS AND REASONS

The Administrative Reforms Commission was required to consider among other matters, problems of redress of citizens' grievances, keeping in mind the need for ensuring the highest standards of efficiency and integrity in the public services, and also for making public administration responsive to the people. More specifically, the Commission was expected to examine:

(i) the adequacy of the existing arrangements for the redress of grievances; and

(ii) the need for introduction of any new machinery or special institution for redress of grievances.

Giving priority to this part of its terms of reference, the Commission made an interim report in which it took note of the oft-expressed public outcry against the prevalence of corruption, the existence of wide-spread inefficiency and the unresponsiveness of administration to popular needs. It felt that the answer to this lay in the provision of a machinery which would examine public complaints and sift the genuine from the false or the untenable so that the administration's failures and achievements could be publicly viewed in their correct perspective. Such an institution was regarded necessary even from the point of view of affording protection to the services. The Commission, therefore, recommended that there should be a statutory machinery to enquire into complaint alleging corruption or injustice arising out of maladministration.

2 The Bill seeks to give effect to the recommendations of the Administrative Reforms Commission in so far as they relate to matters within the purview of the Union Government. In its scope, it differs from the draft bill proposed by the Administrative Reforms Commission in two major respects. It does not extend to public servants in the states. Secondly, it does not confine itself to ministers and secretaries alone. In other words, the Bill seeks to provide a statutory machinery to enquire into complaints based on actions of all Union Public Servants including Ministers.

A

BILL

to make provision for the appointment and functions of certain authorities for the investigation of administrative action taken

---

* Only the important provisions of the Bill are reproduced here.

by or on behalf of the Government or certain public authorities in certain cases and for matters connected therewith.

Be it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:-

1. Short title, extent and commencement (1) This Act may be called the Lokpal and Lokayuktas Act, 1968.

(2) It extends to the Whole of India and applies also to Public servants outside India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint,

2. Definitions. In this Act unless the context otherwise require

(a) "action" means action taken by way of decisi recommendation or finding or in any other manner and includes failure to act and all other expressions connoting action shall be construed accordingly;

(g) "maladministration" means action taken or purporting to have been taken in the exercise of administrative functions in any case-

(i) where such action or the administrative procedure or practic governing such action is unreasonable, unjust, oppressive or improperly discriminatory; or

(ii) Where there has been negligence or undue delay in taking such action, or the administrative procedure or practice governing such action involves undue delay-;

(k) " public servant" denotes a person falling under any of the descriptions hereinafter following, namely:-

(i) every Minister referred to in clause (h),

(ii) every officer referred to in clause (i),

(iii) every member of the Council of Ministers in a Union territory as defined in the Government of/Union territory of Delhi, every member of the Executive Council constituted under the Delhi

'Union territories Act, 1963 and in the case of the

Administration Act, 1966,

(iv) every person in the service or pay of, -

(a) any local authority in any Union territory which is notified by the Central Government in this behalf in the Official Gazette,

(b) any corporation (not being a local authority) established by or under a Central Act and owned or controlled by the Central Government,

(c) any Government company within the meaning of section 617 of the Companies Act, 1956, in which not less than fifty-one per cent. of the paid up share capital is held by the Central Government, or any company which is a subsidiary of a company in which not less than fifty-one per cent. of the paid up share capital is held by the Central Government,

(d) any society registered under the Societies Registration Act, 1860 which is subject to the Control of the Central Government and which is notified by that Government in this behalf in the Official Gazette;

3. Appointment of Lokpal and Lokayuktas. (1) For the purpose of conducting investigations in accordance with the provisions of this Act, the President shall, by warrant under his hand and seal, appoint a person to be known as the Lokpal and one or more persons to be known as the Lokayukta or Lokayuktas:

Provided that, -

(a) the Lokpal shall be appointed after consultation with the Chief Justice of India and the Leader of the Opposition in the House of the People, or if there be no such Leader, a person elected in this behalf by the Members of the Opposition in that

House in such manner as the Speaker may direct;

(b) the Lokayukta or Lokayuktas shall be appointed after consultation with the Lokpal.

(2) Nothing contained in clause (b) of the proviso to sub-section (1) shall apply in the case of the appointment of the first Lokayukta under this section.

(3) Every person appointed as the Lokpal or a Lokayukta shall, before entering upon his office, make and subscribe, before the President, or some, person appointed in that behalf by the President, an oath or affirmation in the form set out for the purpose in the First Schedule.

(4) The Lokayuktas shall be subject to the administrative control of the Lokpal and, in particular, for the purpose of convenient disposal of investigations under this Act, the Lokpal may issue such general or special directions as he may consider necessary to the Lokayuktas:

Provided that nothing in this sub-section shall be construed to authorise the Lokpal to question any finding, conclusion or recommendation of a Loksayukta.

4 Lokpal or Lokayukta to hold no other office. The Lokpal or a Lokayukta shall not be capable of being a member of Parliament or a member of the Legislature of any State and shall not hold any office of trust or profit (other than his office as the Lokpal of, as the case may be, a Lokayukta), or be connected with any political party or carry on any business and accordingly before he enters upon his office, a person appointed as the Lokpal or, as the case may be, as a Lokayukta, shall,-

(a) if he is a member of Parliament or of the Legislature of any State resign such membership ;

(b) if he holds any office of trust or profit, resign from such office;

(c) if he is connected with any political party, sever his connection with it; or

(d) if he is carrying on any business, sever his connections (short of divesting himself of ownership) with the conduct and management of such business.

5 Term of office and other conditions of service of Lokpal and Lokayukta.

(1) Every person appointed as the Lokpal or a Lokayukta shall hold office for a term of five years from the date on which he enters upon his office but shall be eligible for re-appointment for not more than one term:

Provided that, -

(a) the Lokpal or a Lokayukta may, by writing under his hand addressed to the President, resign his office;

(b) the Lokpal or a Lokayukta may be removed from office in the manner specified in section 6;

(c) the Lokpal or a Lokayukta, shall notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) If the office of the Lokpal or a Lokayukta becomes vacant or if the Lokpal or a Lokayukta is, by reason of absence or for any other reason whatsoever, unable to perform the duties of his office, those duties shall, until some other person appointed under section 3 enters upon such office or, as the case may be, until the Lokpal or such Lokayukta resumes his duties, be performed,-

(a) where the office of the Lokpal becomes vacant or where he is unable to perform the duties of his office, by the Lokayukta or if there are two or more Lokayuktas by such one of the Lokayuktas as the President may by order direct;

(b) where the office of a Lokayukta becomes vacant or where he is unable to perform the duties of his office, by the Lokpal himself, or if the Lokpal so directs by the other Lokayukta or, as the case may be, such one of the other Lokayuktas as may be specified in the direction.

(3) Save as otherwise provided in sub-section (1), on ceasing to hold office, the Lokpal or a Lokayukta; -

(i) shall be ineligible for further employment under the Government of India, or for any employment under, or office in, any such local authority, corporation, Government company or society as is referred to in sub-clause (k) of section 2;

(ii) shall not take up any employment under the Government of a State without the prior permission in writing of the President:

Provided that a Lokayukta shall be eligible for appointment as the Lokpal.

(4) The salary and allowances and other conditions of service of the Lokpal or a Lokayukta shall be such as may be prescribed:

Provided that,-

(a) in prescribing the salary and allowances and other conditions of service of the Lokpal, regard shall be had to the salary and allowances and other conditions of service of the Chief Justice of India;

(b) in prescribing the salary and allowances and other conditions of service of the Lokayuktas regard shall be had to the salary and allowances and other conditions of service of a Judge of the Supreme Court of India:

Provided further that the salary, allowances and other conditions of service of the Lokpal or a Lokayukta shall not be varied to his disadvantage after his appointment.

6. Removal of Lokpal or a Lokayukta. (1) Subject to the provisions of article 311 of the Constitution, the Lokpal or a Lokayukta may be removed from his office by the President on the ground of misbehaviour or incapacity and on no other ground:

Provided that the inquiry required to be held under clause(2) of the said article before such removal shall be held by a person appointed by the President, being a person who is or had been a Judge of the Supreme Court of India or the Chief Justice of a High Court.

(2) The person appointed under the proviso to sub-section (1) shall submit the report of his inquiry to the President who shall, as soon as may be, cause it to be laid before each House of Parliament.

(3) Notwithstanding anything contained in sub-section (1), the President shall not remove the Lokpal or a Lokayukta unless an address by each House of Parliament supported by a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal.

7. Matters which may be investigated by Lokpal or Lokayukta. (1) Subject to the provisions of this Act, the Lokpal may investigate any action which is taken by, or with the general or specific approval of,-

(i) a Minister or a Secretary; or

(ii) any other public servant being a public servant of a class or sub-class of public servants notified by the Central Government in consultation with the Lokpal in this behalf,

in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Lokpal, the subject of a grievance or an allegation.

(2) Subject to the provisions of this Act, a Lokayukta may investigate any action which is taken by or with the general or specific approval of, any public servant not being a Minister, Secretary or other Public servant referred to in sub-section (1) in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Lokayukta, the subject of a grievance or an allegation.

(3) Notwithstanding anything contained in sub-section (2), the Lokpal may, for reasons to be recorded in writing, investigate any action which may be investigated by a Lokayukta under that sub-section whether or not a complaint has been made to the Lokpal in respect of such action.

(4) Where two or more Lokayuktas are appointed under this Act, the Lokpal may, by general or special order, assign to each of them matters which may be investgated by them under this Act:

Provided that no investigation made by a Lokayukta under this Act and no action taken or thing done by him in respect of such investigation shall be open to question on the ground only that such investigation relates to a matter which is not assigned to him by such order.

8. Matters not subject to Investigation (1) Except as hereinafter provided, the Lokpal or a Lokayukta shall not conduct any investigation under this Act in the case of a complaint involving a grievance in respect of any action,-

(a) if such action relates to any matter specified in the Second Schedule; or

(b) if the complaint has or had any remedy by way of proceedings before any tribunal or court of law:

Provided that the Lokpal or a Lokayukta may conduct an

investigation notwithstanding that the complaint had or has such a remedy if the Lokpal or, as the case may be, the Lokayukta is satisfied that such person could not or cannot, for sufficient cause, have recourse to such remedy.

(2) The Lokpal or a Lokayukta shall not conduct any investigation in the case of any complaint involving a grievance or an allegation in respect of any action inquired into by, or referred for inquiry to, a Commission of Inquiry under the Commissions of Inquiry Act, 1952.

(3) The Lokpal or a Lokayukta shall not investigate any complaint involving a grievance against a public servant referred to in sub-clause (iv) of clause (k) of section 2.

(4) The Lokpal or a Lokayukta shall not investigate, -

(a) any complaint involving a grievance, if the complaint is made after the expiry of twelve months from the date on which the action complained against becomes known to the complainant;

(b) any complaint involving an allegation, if the complaint is made after the expiry of five years from the date on which the action complained against is alleged to have taken place:

Provided that the Lokpal or a Lokayukta may entertain a complaint referred to in clause (a), if the complainant satisfies him that he had sufficient cause for not making the complaint within the period specified in that clause.

(5) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lokpal or a Lokayukta to question any administrative action involving the exercise of a discretion except where he is satisfied that the elements involved inthe exercise of the discretion are absent to such an extent that the discretion cannot be regarded as having been properly exercised.

9. Provisions relating to complaints. (1) Subject to the provisions of this Act, a complaint may be made under this Act to the Lokpal or a Lokayukta,-

(a) in the case of a grievance, by the person aggrieved;

(b) in the case of an allegation, by any person other than a public servant:

Provided that, where the person aggrieved is dead or is for any reason unable to act for himself, the complaint may be made by any person who in law represents his estate or, as the case may be, by any person who is authorised by him in this behalf.

(2) Every complaint shall be made in such form and shall be accompanied by such affidavits and other documents as may be prescribed.

(3) Notwithstanding anything contained in any other enactment, any letter written to the Lokpal or a Lokayukta by a person in Police custody, or in a gaol or in any asylum or other receptacle for insane persons, shall be forwarded to the addressee unopened and without delay by the police officer or other person in charge of such gaol, asylum or other receptacle.

10. Procedure in respect of investi-gations. (1) Where the Lokpal or a Lokayukta proposes to conduct any investigation under this Act, he shall,-

(a) forward a copy of the complaint or, in the case of any investigation which he proposes to conduct on his own motion, a statement setting out the grounds therefor, to the public servant concerned and the competent authority concerned; and

(b) afford to the public servant concerned an opportunity to offer his comments on such complaint or statement.

(2) Every such investigation shall be conducted in private and in particular, the identity of the complainant and of the public

sx

servant affected by the investigation shall not be disclosed to the public or the press whether before, during or after the investigation.

(3) Save as aforesaid the procedure for conducting any such investigation shall be such as the Lokpal or, as the case may be, the Lokayukta considers appropriate in the circumstances of the case.

(4) The Lokpal or a Lokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint involving a grievance or an allegation, if in his opinion-

(a) the complaint is frivolous or vexatious or is not made in good faith; or

(b) there are no sufficient grounds for investigating or, as the case may be, for continuing the investigation; or

(c) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail of such remedies.

(5) In any case where the Lokpal or a Lokayukta decides not to entertain a complaint or to discontinue any investigation in respect of a complaint, he shall record his reasons therefor and communicate the same to the complainant and the public servant concerned.

(6) The conduct of an investigation under this Act in respect of any action shall not affect such action, or any power or duty of any public servant to take further action with respect to any matter subject to the investigation.

11. Evidence (1) Subject to the provisions of this section, for the purpose of any investigation under this Act, the Lokpal or a Lokayukta may require any public servant or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) For the purpose of any such investigation the Lokpal or a Lokayukta shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure,1908, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any Court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) such other matters as may be prescribed.

(3) Any proceeding before the Lokpal or a Lokayukta shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code.

(4) Subject to the provisions of sub-section (5), no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to Government or persons in Government service, whether imposed by any enactment or by any rule of law, shall apply to the disclosure of information for the purposes of any investigation under this Act.

(5) No person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce so much of any document-

(a) as might prejudice the security or defence or international relations of India(including India's relations with the Government of any other country or with any international Organisation), or the investigation or detection of crime; or

(b) as might involve the disclosure of proceedings of the Cabinet of the Union Government or any Committee of that Cabinet, and

and for the purpose of this sub-section a certificate issued by a Secretary certifying that any information, answer or portion of a document is of the nature specified in clause(a) or clause (b), shall be binding and conclusive.

(6) Without prejudice to the provisions of sub-section (4), no person shall be compelled for the purposes of investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before a Court.

12. Reports of Lokpal and Lokayuktas. (1) If, after investigation of any action in respect of which a complaint involving a grievance has been or can be or could have been made, the Lokpal or a Lokayukta is satisfied that such action has resulted in injustice to the complainant or any other person, the Lokpal or Lokayukta shall, by a report in writing, recommend to the public servant and the competent authority concerned that such injustice shall be remedied in such manner and within such time as may be specified in the report.

(2) The competent authority to whom a report is sent under sub-section (1) shall, within one month of the expiry of the term specified in the report, intimate or cause to be intimated to the Lokpal or, as the case may be, the Lokayukta of the action taken for compliance with the report.

(3) If, after investigation of any action in respect of which a complaint involving an allegation has been or can be or could have been made, the Lokpal or a Lokayukta is satisfied that such allegation can be substantiated either wholly or partly, he shall

by a report in writing communicate his findings along with the relevant documents, materials and other evidence to the competent authority.

(4) The competent authority shall examine the report forwarded to it under sub-section (3) and intimate within three months of the date of receipt of the report, the Lokpal or, as the case may be, the Lokayukta, the action taken or proposed to be taken on the basis of the report.

(5) If the Lokpal or the Lokayukta is satisfied with the action taken or proposed to be taken on his recommendations or findings referred to in sub-sections (1) and (3), he shall close the case under information to the complainant, but where he is not so satisfied and if he considers that the case so deserves, he may make a special report upon the case to the President and may also at his discretion inform the complainant concerned:

Provided that no such special report shall be made in respect of any action taken in consultation with the Union Public Service Commission.

(6) The Lokpal and the Lokayuktas shall present annually a consolidated report on the performance of their functions under this Act to the President.

(7) Where an adverse comment against any person or department or organization has been made in any annual or special report, such report shall also contain the substance of the defence adduced by the person complained against and the comments made by or on behalf of the department or organisation affected.

(8) On receipt of a special report under sub-section (5), or the annual report under sub-section (6), the President shall

cause a copy thereof together with an explanatory memorandum to be laid before each House of Parliament.

(9) Subject to the provisions of sub-section (2) of section 10, the Lokpal may at his discretion make available, from time to time, the substance of cases closed or otherwise disposed of by him or by a Lokayukta, which may appear to him to be of general public, academic or professional interest, in such manner and to such persons as he may deem appropriate.

13. Staff of Lokpal and Lokayuktas. (1) The Lokpal may appoint, or authorise a Lokayukta or any officer subordinate to the Lokpal or a Lokayukta to appoint, officers and other employees to assist the Lokpal and the Lokayuktas in the discharge of their functions under this Act.

(2) The categories of officers and employees who may be appointed under sub-section (1), their salaries, allowances and other conditions of service and the administrative powers of the Lokpal and Lokayuktas shall be such as may be prescribed after consultation with the Lokpal.

(3) Without prejudice to the provisions of sub-section (1), the Lokpal or a Lokayukta may utilise the services of any officer or investigating agency of the Central Government or of any other person or agency for the purpose of conducting any investigation under this Act:

Provided that the Lokpal or a Lokayukta shall obtain the consent of the Central Government before utilising the services of any officer or agency of that Government.

14. Secrecy of Information (1) Any information, obtained by the Lokpal or the Lokayuktas or members of their staff in the course of, or for the purposes of any investigation under this

Act, and any evidence recorded or collected in connection with such information, shall be treated as confidential and notwithstanding anything contained in the Indian Evidence Act,1872, no Court shall be entitled to compel the Lokpal or a Lokayukta or any public servant to give evidence relating to such information or produce the evidence so recorded or collected.

(2) Nothing in sub-section (1) shall apply to the disclosure of any information or particulars,-

(a) for purposes of the investigation or in any report to be made thereon or for any action or proceedings to be taken on such report;

(b) for purposes of any proceedings for an offence under the Indian Official Secrets Act, 1923, or an offence of perjury or for purposes of any proceedings under section 15; or

(c) for such other purposes as may be prescribed.

(3) An officer or other authority prescribed in this behalf may give notice in writing to the Lokpal or a Lokayukta, as the case may be, with respect to any document or information specified in the notice or any class of documents so specified that in the opinion of the Central Government the disclosure of the documents or information or of documents or information of that class would be contrary to public interest and where such a notice is given, nothing in this Act shall be construed as authorising or requiring the Lokpal, the Lokayukta or any member of their staff to communicate to any person any document or information specified in the notice or any document or information of a class so specified.

(4) No person shall publish any proceedings relating to an investigation which is pending before the Lokpal or a Lokayukta as the case may be; nor shall any person publish such proceedings after

the investigation is completed unless prior permission for the publication is obtained from the Lokpal, or the Lokayukta, as the case may be.

(5) Whoever contravenes the provisions of sub-section (4) shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

(6) Nothing in sub-sections (4) and (5) shall apply to the publication of any report laid before a House of Parliament under sub-section (8) of section 12.

15. Intentional insult or bringing into disreputo, Lokpal or Lokayukta.....

16. Protection. (1) No suit, prosecution, or other legal proceeding shall lie against the Lokpal or the Lokayuktas or any member of their staff and employees in respect of anything which is in good faith done or intended to be done under this Act.

(2) No proceedings of the Lokpal or the Lokayuktas shall be held bad for want of form and except on the ground of jurisdiction, no proceedings or decision of the Lokpal or the Lokayuktas shall be liable to be challenged, reviewed, quashed or called in question in any court.

17. Conferment of additional functi-ons on Lokpal and Lokayuktas, etc. (1) The President may, by notification published in the Official Gazette and after consultation with the Lokpal, confer on the Lokpal or a Lokayukta, as the case may be, such additional functions in relation to the redress of grievances and eradiction of corruption as may be specified in the notification.

(2) The President may, by order in writing and after consultation with the Lokpal, confer on the Lokpal or a Lokayukta such powers of a supervisory nature over agencies, authorities or officers set up, constituted or appointed by the Central Government for the redress of grievances and eradication of corruption.

(3) The President may, by order in writing and subject to such conditions and limitations as may be specified in the order, require the Lokpal to investigate any action (being action in respect of which a complaint may be made under this Act to the Lokpal or a Lokayukta), and notwithstanding anything contained in this Act the Lokpal shall comply with such order.

18. Power to Delegate....

19. Power to make Rules.....

20. Removal of doubts. (1) For the removal of doubts it is hereby declared that nothing in this Act shall be construed to authorise the Lokpal or a Lokayukta to investigate any action which is taken by or with the approval of-

(a) the Chief Justice or a Judge or an Officer or servant of the Supreme Court of India;

(b) the Chief Justice or a Judge of the Delhi High Court or a Judicial Commissioner, Additional Judicial Commissioner or an Assistant Judicial Commissioner in any Union territory or any District Judge in a Union territory;

(c) the Comptroller and Auditor-General of India;

(d) the Chairman or a member of the Union Public Service Commission;

(e) the Chief Election Commissioner, the Election Commissioners and the Regional Commissioners referred to in article 324 of the Constitution.

21. Saving. The provisions of this Act shall be in addition to the provisions of any other enactment or any rule of law under which any remedy by way of appeal, revision, review or in any other manner is available to a person making a complaint under this Act in respect of any action, and nothing in this Act shall limit or affect the right of such person to avail of such remedy.

APPENDIX VIII

COPY OF QUESTIONNAIRE I ISSUED FOR ASCERTAINING PUBLIC OPINION IN RELATION TO 'WHITE COLLAR CRIME.

Name:

Occupation:

Address:

Do you think Graft, Corruption or Fraud is prevalent on a considerable scale in India in the following areas?

Yes: No: Do not know:

1) Government of Officials.
2) Police.
3) Defence Services.
4) The Press.
5) Administration of
   a) Criminal Law
   b) Civil Law
6) Customs
7) Stock Exchange
8) Big Business
9) M.Ps and Ministers
10) Dealers in Food and Drugs.
11) Banking
12) Local Bodies (Panchayats and Municipal Bodies).

APPENDIX IX

SUMMARY OF QUESTIONNAIRE II ON PUBLIC ATTITUDES TOWARDS WHITE COLLAR CRIMINALITY.

I. Do you consider the following as Crimes? II. What types of sanction do you desire for each of them?

	I			II				
	Yes	No	No definite views	Fine	Imprisonment	Fining and if so, Incorrous of simple	cancellation of privileges	Death.
1. Company Law Violations.								
2. Food and Drug Adulterations.								
3. Violation of Rent Control								
4. Black Market Violations.								
5. Foreign Exchange Violations.								
6. Stock Market Violations.								
7. Corruption in Public Offices.								
8. Traffic Violations.								
9. Violation of Professional conduct by (i) Doctors (ii) Lawyers (iii) Teachers (iv) Engineers.								
10. Tax Evasion and Avoidance.								
11. Violation of Weights and Measures Laws.								
12. Profiteering.								

SELECTED BIBLIOGRAPHY

BIBLIOGRAPHY

I. BOOKS

1. Albert Cohen, Alfred Smith and Karl Schussler, The Sutherland Papers, Indiana University Publications (1956).
2. Ambirayan, The Taxation of Corporate Income in India, Asia(196
3. Arthur Kellet and F.J.Schlink, 100,000,000 Guinea Pigs, N.Y. (1935).
4. Abul Hasanat, Justice and Peace for All, Dacca (1954).
5. Brown, J.A.C., Techniques of Persuasion, Penguin (1963).
6. Barnes and Teeters, New Horizons in Criminology (1949).
7. Clinard, Marshall B., The Black Market, N.Y. (1952).
8. Dwivedi, S.N., The Orissa Affair and C.B.I.Inquiry, New Delhi (1966).
9. Dwivedi and Bhargava, Political Corruption in India, New Delhi (1967).
10. Deb, R., Criminology, Criminal Law and Investigation, Calcutta (1968).
11. Donald R.Cressey, Other People's Money, Glencoe (1953).
12. Edwards, Mens Rea in Statutory Offences (1955).
13. Friedmann, W.,(Ed) Anti-Trust Laws: A Comparative Symposium (1956).
14. Friedmann, W., Law in a Changing Society (1949).
15. Gaur, Hari Singh, Penal Law of India (1963).
16. Halloran, James D., Control or Consent?, Sheed & Ward (1963)
17. Hall, Jerome, General Principles of Criminal Law (1960).
18. Jeejeebhoy, Bribery and Corruption in Bombay (1952).
19. Kaldor, Nicholas, Indian Tax Reform (1956)
20. Kenny, Outlines of Criminal Law (17th Edn).

21. Monterio, John B., Corruption: Control of Maladministration, Bombay (1966).

22. Mannheim, H., Comparative Criminology (1965).

23. Mannheim, H., Criminal Justice and Social Reconstruction (1946).

24. Morris and Howard, Studies in Criminal Law, Oxford (1964).

25. Namjoshi, M.V., Monopolies in India, Bombay (1966)

26. Ronald Wraith and Edgar Simpkins, Corruption in Developing Countries (1963).

27. Robert Rice, The Business of Crime, N.Y. (1939).

28. Sutherland, Edwin H., White Collar Crime (1961).

29. Sutherland, Edwin H., Criminology (1939).

30. Seervai, H.M., Constitutional Law of India, Tripathy (1967).

31. Varshni, Law of Bribery and Corruption (1963).

II. ARTICLES:

1. Aubert, White Collar Crime and Social Structure, 58 Am. Jnl. of Sociology (1952), 263.

2. Bhandari, M.C., Rethinking on the Functions of Auditors (1964) 1 Com.L.J. 81.

3. Bose, Winifred, The Trader, Opinion (Bombay), Jan. 1965.

4. Caldwell, Robert, A Re-examination of the Concept of White Collar Crime, Federal R Probation (1958), 30.

5. Gorwala, A.D., Report on Public Administration (1951).

6. Hartung, Frank., White Collar Crime: Its Significance For Theory and Practice, Federal Probation, 17 (1953), 31.

7. Hartung, Frank., White Collar Offences in the Wholesale Meat Industry in Detroit, 56 Am. Jnl. of Sociology (1950) 25.

8. Krishna Iyer, V.R., Diagnosis and Treatment of Corruption, Seminar, April 1960.

9. Katju, K.N., Legal Profession and Perjury in Law Courts,

A.I.R. 1964 (Jnl) 75.

10. Kaveeshwar, A Critical Analysis of Legal and Monetary Aspects of Chit Funds (1967) Central Bureau of Investigation, New Delhi.

11. Lass Well, Bribery, Encyclopaedia of Social Sciences, Vol 2, (1959), 690.

12. Lane, Why Businessmen Violate the Law, 44 Jnl. of Criminal Law, Criminology and Police Science (1953), 151.

13. Morris, Albert, Changing Concepts of Crime, Encyclopaedia of Criminology (1942).

14. Malaviya, H.D., Press Monopolies in India, Socialist Congressman, Jan. 26, Feb 15 and March 1, 1963.

15. Malhotra, Food Adulteration: A Menace, Social Welfare, Dec,1964.

16. Marshall Clinard., Criminological Theories of Violations of Wartime Regulations, 11 Am. Sociological Review (1956),258.

17. Maleviya, H.D., Audit Business in India: Case for its Nationalization, Socialist Congressman (N.Delhi),Sept, 1963.

18. Nigam & Joshi, All India Survey of Company Directorships, Commerce, Dec. 1962.

19. Newman, Donald,The Problem of White Collar Crime, Law and contemporary Problems (1958), 635.

20. Newman, Public Attitude towards White Collar Crime, 4 Social problems (1957), 228.

21. Sen and Dutta, Dangers of Food Adulteration, Swasth Hind (New Delhi) March, 1963.

22. Subramoniyan, Legal Standards for Dairy Products in India, Swasth Hind, Dec. 1962.

23. Schwenk, The Administrative Crime, 42 Mich. L.R.(1943).

24. Sayre, Public Welfare Offences, 33 Col. L.R. 55.

25. Sutherland, Edwin H., Crime and Business, Annals of the Am. Academy of Political and Social Sciences, 217 (1941), 112.

26. Sutherland, White Collar Criminality, Am. Sociological Reviews (1940), 1.

27. Sutherland, Is " White Collar Crime" Crime? 10 Am. Sociological Review(1945), 132.

28. Toppan, Paul, who is theCriminal? 12 Am. Sociological Review (1947), 96.

29. Venkatacher, Ecoromy and Efficiency in Public Administration Forum of Free Enterprise (Bombay).

30. Wechsler, The Criteria of Criminal Responsibility, 22 Un of Chic. L.R.

III REPORTS.

1. Report of the Income Tax Investigation Commission, 1949.

2. Final Report of the Committee on Consumer Protection, 1952, Cmnd 1781, Her Majesty's Stationery Office, London.

3. Report of the Railway Corruption Enquiry Committee, 1953-55, Ministry of Railways, Government of India.

4. Report of the Pharmaecutical Enquiry Committee, 1954, Ministry of Commerce and Industry, Government of India.

5. Report of the Sales Tax Enquiry Committee, 1957-58, Government of Bombay.

6. Report of a Survey on Public Administration in India (Appleby Report), 1957, Cabinet Secretariat, Govt. of India.

7. Fourteenth Report of the Law Commission of India, Vol II., Reform of Judicial Administration, 1958.

8. Report of the Direct Taxes Administration Enquiry Committee, 1958-59, Government of India.

9. Report of the Ad Hoc Committee on Quality Control and Pre-shipment Inspection, 1963, Ministry of Commerce and Industry, Government of India.

10. Report of the Joint Select Committee of Parliament on the Prevention of Food Adulteration (Amendment) Bill, 1963, Lok Sabha Sect., Government of India.

11. Report of the Commission of Inquiry- Inquiry on the Administration of Dalmia- Jain Companies, 1963, Ministry of Commerce and Industry, Government of India.

12. Report of the Committee on Prevention of Corruption(Santhanem Committee),1964, Ministry of Home Affairs, Government of India.

13. Report of the Committee on Distribution of Income and Levels of Living- Part I: Distribution of Wealth and Concentration of Economic Power, 1964, Planning Commission.

14. Report of the Commission of Inquiry (Kairon Inquiry), 1964, New Delhi.

15. Report of the Drugs Enquiry Commission, 1964, Dept. of Health, Government of W.Bengal.

16. Report of the Monopolies Inquiry Commission, 1965, Vols I & II, Government of India.

17. Report of the Drugs and Equipments Stenderds Committee, 1965, Ministry of Health, Government of India.

18. Report of the Managing Agency Enquiry Committee, 1966,Ministry of Law, Government of India.

19. Twenty Ninth Report of the Law Commission of India- Proposal to include Certain Social and Economic Offences in the Indian Penal Code, 1966.

20. Interim Report on Redress of Citizen's Grievances by the Administrative Reforms Commission, Government of India (1966).

21. Report of the Steel Transactions Inquiry Committee, Government of India, 1968.

22. Annual Reports on the Working and Administration of the Companies Act, 1956, Department of Company Law Administration, Government of India.

23. Annual Reports of the Delhi Special Police Establishment, Ministry of Home Affairs, Government of India.

24. Annual Reports of the Central and State Vigilance Commissions.

25. Annual Reports of the Ministries of Finance and Health including the Directorate of Foreign Exchange, Central Board of Revenue Etc.

26. Reports of the Public Accounts Committee of Parliament.